

BOUTIN ASSOCIATES, P.L.L.C.
Attorneys At Law

RECEIVED

Brenda E. Keith

APR 14 2003

03-05 WMC

April 14, 2003

Michael Sclafani, Appeals Clerk
Waste Management Council
C/o DES, Waste Management Division
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Hand-delivered

Re: NHDES-WMD Standard Permit #DES-SW-SP-03-002

Dear Clerk Sclafani:

Enclosed please find the Notice of Appeal of the Town of Bethlehem, filed pursuant to RSA 149-M:8 and RSA 21-O:14. Please do not hesitate to contact me if you have any questions. Pursuant to Env-WMC 202.03, we have enclosed 20 sets of all documents filed, including this letter.

Sincerely,


Brenda E. Keith Esq.

- c. Town of Bethlehem
Robert Monaco, Acting Commissioner
Dr. Philip O'Brien, Director Waste Management Div.
Michael Guilfoy, Acting Section Supervisor, Waste Management Div.
Bryan Gould, Esq.
File

Town of Bethlehem

2155 MAIN STREET • POST OFFICE BOX 186 • BETHLEHEM, NEW HAMPSHIRE 03574
603-688-3351/889-2042 fax 603/688-2260 email tob@together.net

April 10, 2003

Waste Management Council
C/o DES, Waste Management Division
6 Hazen Drive
PO Box 95
Concord, NH 03302-0095

To Whom It May Concern:

Pursuant to Env-WMC 203.13(b), the Town of Bethlehem hereby authorizes our Town's Legal Counsel, Boutin & Associates, P.L.L.C., to represent the Town in its appeal to the Waste Management Council. This includes any and all appearances before the Council regarding our appeal of NHDES's issuance of the Stage IV Standard Permit to North Country Environmental Services, Inc..

Since
COPY
Bethlehem Selectboard



**THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL**

IN RE: NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.

Standard Permit No. DES-SW-SP-03-002

**NOTICE OF APPEAL TO THE WASTE MANAGEMENT COUNCIL
OF THE STAGE IV PERMIT ISSUED BY THE
NEW HAMPSHIRE DIVISION OF ENVIRONMENTAL SERVICES TO
NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.**

The Town of Bethlehem, (the "Town") by and through its counsel, Boutin & Associates, P.L.L.C., files this Notice of Appeal, appealing the issuance by the New Hampshire Department of Environmental Services, Waste Management Division ("NHDES-WMD") of a Standard Solid Waste Facility Permit to North Country Environmental Services, Inc. ("NCES") for a new Stage IV landfill, and in support thereof states:

Parties and Jurisdiction

The Town of Bethlehem, New Hampshire is an incorporated municipality within the State of New Hampshire with a mailing address of 2155 Main Street, P.O. Box 189, Bethlehem, NH, 03574.

The Waste Management Division of the New Hampshire Department of Environmental Services, with an address of 6 Hazen Drive, Concord, NH 03301, on or about March 13, 2003, issued Standard Permit No. DES-SW-SP-03-002 to North Country Environmental Services, Inc. (NCES) for a new solid waste facility, known as Stage IV, located on Trudeau Road in Bethlehem, New Hampshire.

This Council has jurisdiction to hear this appeal pursuant to RSA 149-M:8, RSA 21-O:9, RSA 21-O:14, RSA 541, and Env-WMC 203.03, and the Town of Bethlehem, an aggrieved party, now appeals the NHDES-WMD issued Standard Permit.

1. Relief Sought

The Town of Bethlehem, seeks reversal of the decision by the NHDES-WMD to issue a Standard Permit to NCES for Stage IV on the following grounds:

A. NHDES-WMD's public benefit determination failed to consider the Town's position against further expansion of the landfill in contravention of RSA 149-M:11(TV).

B. NHDES-WMD erred in issuing the permit as the the application does not meet the RSA 149-M:11 criteria.

I. RSA 149-M:11(IX) requires NHDES-WMD to deny an application if it does not meet the criteria under RSA 149-M:11(III)(a). The Town appeals NHDES-WMD's determination that the application meets a short-and long-term capacity shortfall under RSA 149-M:11(III)(a).

II. The NHDES-WMD erred when it interpreted RSA 149-M:11(V)(c) and (d) to include only those landfills that had valid standard permits.

III. The NHDES-WMD erred in issuing the permit because the facility does not assist the state in achieving the implementation of the hierarchy and goals under RSA 149-M:2 and M:3, as required under RSA 149-M:11(III)(b).

C. NHDES-WMD erred when it did not require NCES to correct its incomplete application pursuant to RSA 149-M:9(X) and Env-Wm 314.07.

D. NHDES-WMD erred when it refused to grant the Town's request for a Second Public Hearing under RSA 149-M:11(IV).

2. Legal Name and Address of Appellant:

The Town of Bethlehem, New Hampshire, with a mailing address of 2155 Main Street, P.O. Box 189, Bethlehem, NH, 03574. The Board's designated representative is the law firm of Boutin & Associates, P.L.L.C., and its attorneys: Edmund J. Boutin, Brenda E. Keith, and Steven A. Clark, all of 1 Buttrick Road, P.O. Box 1107, Londonderry, NH, 03053.

3. Statement of the Facts:

Brief History of the Landfills in Bethlehem

The North Country Environmental Services, Inc. has had three Stages of landfills permitted by NHDES-WMD sited on Trudeau Road in the Town of Bethlehem, New Hampshire. NCES owns approximately 105 acres on Trudeau Road, parts of which were purchased at different times. NCES operates its current landfill stages with local approvals including a 1977 Variance and a 1987 Special Exception. The areal extent of those local approvals were litigated in 1998 – 2001 in the Grafton County Superior Court and New Hampshire Supreme Court. The Courts held that NCES has the potential use of 51 acres for landfilling purposes.¹ Bethlehem believes that any further expansion or new landfill outside of those 51 acres requires further local approvals. The extent of those local approvals necessary is currently being litigated in the Grafton County Superior Court.²

1 NCES v. Bethlehem, Dockets #98-E-141 and #98-E-151 ("NCES I") (*affirmed by NCES v. Bethlehem*, 146 N.H. 348 (2001)).

2 NCES v. Bethlehem, Docket #01-E-0177.

In 1987, the Bethlehem Town Meeting adopted a zoning amendment, which prohibited landfills in the Town unless they were publicly owned. See Exhibit B. In 1989, Consumat Sanco, Inc. (NCES's predecessor-in-interest) purchased a parcel, which abutted the 51-acre landfill. See Exhibit C. This parcel is now the area into which NCES seeks to expand via the Stage IV application just approved by NHDES-WMD. In 1992, the Town further amended its zoning ordinance to prevent the expansion of landfills unless they were publicly owned. See Exhibit D. The Town's position is that NCES cannot expand or construct a new landfill outside the 51 acres. The footprint of Stage IV is outside the 51 acres. The Town also takes the position that its Site Plan Review Regulations are applicable to any construction inside and outside the 51 acres.

On March 14, 2000, the Bethlehem Town Meeting adopted a height ordinance, indicating that; "... no solid waste disposal facility shall have a height exceeding 95 (ninety-five) feet." See Exhibit E. On March 17, 2001, the Town Meeting further amended the Town's Zoning Ordinance by adding, "... no solid waste disposal facility shall have a height exceeding 95 (ninety-five) feet above the natural and undisturbed contour of the land under any existing or future landfill." See Exhibit F. The Town takes the position that its height restriction is applicable to the entire 105-acre parcel.

The Stage IV Permit

On April 3, 2002, NCES submitted to NHDES-WMD an application for a new landfill, to be known as Stage IV. (On file with NHDES-WMD, and shall be submitted into evidence by the Division pursuant to Env-WMC 203.20(f)). The NHDES-WMD reviewed the application for technical completeness and issued a comment letter on or about June 3, 2002. NCES responded to the NHDES-WMD's completeness review comments on or about June 28, 2002. NHDES-WMD held a public hearing on October 8, 2002, attended by more than 50 people, all but one of whom spoke against issuing a Stage IV Permit. The NHDES-WMD received additional written testimony through November 5, 2002, including a submission by the Town of Bethlehem,

through its legal counsel, Boutin & Associates, P.L.L.C. and its engineering firm, Aries Engineering, in which the Town challenged the applicant's capacity needs analysis. See Exhibit G. The NHDES-WMD continued to receive written testimony through March of 2003. The Town's engineer submitted further comments on "Permitted and Potential Disposal Capacity," dated December 10, 2003. See Exhibit H. NCES, through its counsel, also filed a report. See Exhibit I.

The Town, through its counsel, filed a Motion to Stay the Proceedings with NHDES-WMD on October 8, 2002. See Exhibit J. The motion requested that the NHDES-WMD put the application on hold until the pending litigation was decided in Grafton County Superior Court, challenging NCES's plan to build Stage IV outside of an area approved for landfill use. The motion also asserted that nothing in RSA 149-M affects any obligation on the part of NCES to obtain local approvals. The NHDES-WMD, through the Attorney General's Office, rejected the Town's motion, but indicated that the NHDES-WMD would consider the contents of the motion as public comment. See Exhibit K.

The Town, through its Board of Selectmen, requested an additional public hearing, more than once, including a request after it discovered that it did not have supplemental materials submitted to the NHDES by NCES. See Exhibit L. The NHDES denied the Town's request, and on March 13, 2003, the NHDES-WMD approved the Stage IV permit. See Exhibit A. The NHDES-WMD issued its response to the public comments on the same day it issued the permit. See Exhibit M. It also issued its own Capacity Needs Analysis dated March 7, 2003. See Exhibit N.

The Stage IV standard permit Terms and Conditions included, *inter alia*, under ¶ 7(f) Determinantion of Public Benefit that NCES's proposed facility met the public benefit requirements under RSA 149-M:11, III and V. The permit under ¶ 7(f) did not cite RSA 149-M:11, IV.

4. Decision of Order which is Being Appealed:

Standard Permit #DES-SW-SP-03-002 (See Exhibit A attached).

Respectfully submitted,

TOWN OF BETHLEHEM

By Its Attorneys,

BOUTIN & ASSOCIATES, P.L.L.C.

Date: April 14, 2003

By,

COPY


Brenda E. Keith
One Buttrick Road
P.O. Box 1107
Londonderry, NH 03053
(603) 432-9566

CERTIFICATE OF SERVICE

I, Brenda E. Keith, Esquire, hereby certify that I made service of the foregoing Appeal by mailing a copy of the same, postage prepaid, to: Robert Monaco, Acting Commissioner New Hampshire Department of Environmental Services, Dr. Philip O'Brien, Director of Waste Management Division, Michael Guilfoy, Acting Section Supervisor, Waste Management Division, Town of Bethlehem, and Bryan K. Gould, Esquire, counsel for North Country Environmental Services.

Date: April 14, 2003

COPY

Brenda E. Keith

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT COUNCIL

IN RE: NORTH COUNTRY ENVIRONMENTAL SERVICES, INC.
Standard Permit No. DES-SW-SP-03-002

MEMORANDUM IN SUPPORT OF APPEAL

A. THE NHDES FAILED TO CONSIDER THE TOWN'S POSITION
AGAINST FURTHER EXPANSION OF THE LANDFILL UNDER ITS
PUBLIC BENEFIT ANALYSIS IN CONTRAVENTION OF RSA 149-
M:11(IV).

The standard permit issued by NHDES determined that Stage IV serves a public benefit. Paragraph 7(f) Determination of Public Benefit indicated:

As required by RSA 149-M:11, III and V, the Department has reviewed the projected 20 year solid waste disposal capacity needs for the state of New Hampshire in the short-term and the long-term on the date the permit was issued, the type, size, and location of the facility, the extent to which this facility can satisfy that need; and waste diversion activities of the applicant as outlined in its application. Based on this review the Department has determined that this facility can provide a substantial public benefit, as required by RSA 149-M:11 (X).

The NHDES-WMD erred, however, in its determination analysis, as the Department completely ignored RSA 149-M:11(IV)(a). Not only did the Department fail to consider the voluminous testimony, both verbal and written, showing that the local community was firmly against the issuance of the Stage IV permit, the Department did not even give a cursory review of the requirement to consider the local communities positions.

RSA 149-M:11(IV) indicates that the "department **shall** also consider as part of its public benefit determination: (a) The concerns of the citizens and governing bodies

of the host municipality . . .” (emphasis added). The statute uses the words “shall consider” it does not say “may consider.” Generally, the use of the word “shall” in a statutory provision is a command, requiring mandatory enforcement. New Hampshire Dept. of Resources and Economic Development v. Dow, 148 N.H. 60 (2002), City of Manchester v. Doucet, 133 N.H. 680, 683 (1990). Martino v. Dept. of Labor Compensation Appeals Board, 138 N.H. 612, 615 (1984). RSA 149-M:11(IV)(a) is such a statute. The plain language of the statute commands that the NHDES-WMD consider the concerns of the host community.

There is not one shred of evidence that even suggests the NHDES-WMD considered the concerns of the citizens and governing bodies of the host municipality. The Permit itself is evidence that the NHDES-WMD failed to address RSA 149-M:11(IV). A reasonable inference from the language contained in ¶7(f) is that NHDES-WMD does not even believe it is required to address the concerns of the host municipality, otherwise it would have included in its first sentence “as required by RSA 149-M:11, III, IV, and V . . .” instead of only citing RSA 149-M:11, III and V. The omission is glaring. The omission is contrary to the statute and the WMD’s rules, and is both arbitrary and capricious. The omission is enough evidence in and of itself to meet the burden of proof required by Env-WMC 203.16 to overturn WMD’s issuance of the Stage IV permit.

Had the NHDES-WMD followed the requirements of RSA 149-M:11(IV)(a), and actually considered the concerns of the citizens and governing bodies of the host municipality, it could not have determined that Stage IV met the public benefit requirement. The zoning ordinances of the Town of Bethlehem, which remain in place

today, prohibit the expansion or siting of new landfills in the Town. See Exhibits B and D. That prohibition was adopted prior to NCES's acquisition of much of the land where Stage IV will be constructed. See Exhibit C. The Public Comment files in the possession of the NHDES-WMD, and tapes of the October 8, 2002, Public Hearing contain testimony, both written and oral, that show the host community was both concerned and strongly opposed to further expansion of the landfill in the Town of Bethlehem. Those concerns included spoilage of the scenic beauty of their White Mountain area, seepage into the Ammonoosuc River, numerous and significant odor problems, and other environmental concerns. These concerns led the Town to adopt a height restriction for landfills in 2000. See Exhibit E. Photographs taken by the Town's engineers illustrate the concerns of the Town's people over the height issue of the landfill in light of its location adjacent to the White Mountain National Forest. See Exhibit O. (See also Public Comments files in the possession of NHDES-WMD).

RSA 149-M:11(IX) provides for an automatic denial of the application for a permit if the RSA 149-M:11(III) criteria is not met. NHDES seems to construe that this means that if the paragraph III criteria is met that it requires NHDES to issue a permit. RSA 149-M:11(X) does not, however, mandate the Department to issue a permit if it determines that an applicant has met the criteria under Paragraph III of RSA 149-M:11. It merely states that the Department must state that determination in any permit issued. This presumption on the part of NHDES-WMD, that once the Paragraph III criteria are met then the department must issue the permit, completely disregards the concerns of the host community as required under Paragraph IV. The only way to ignore the clear unequivocal wishes of the Town of Bethlehem, as evidenced by the Town's voter-

enacted zoning ordinances, is if the NHDES-WMD is asserting that RSA 149-M preempts the local ordinance. NHDES-WMD has not asserted preemption under RSA 149-M. See Exhibit M. The issuance of the Stage IV permit by the Department is contrary to the statute and is arbitrary and capricious.

B. NCES's APPLICATION DOES NOT MEET THE RSA 149-M:11 CRITERIA TO ISSUE A PERMIT.

RSA 149-M:11(III) requires NHDES to determine whether a proposed solid waste facility provides a substantial public benefit based on certain mandatory criteria being met, including, *inter alia*, short- and long-term capacity needs, and the ability of the proposed facility to assist the state in achieving the implementation of the hierarchy and goals under RSA 149-M:2 and M-3. RSA 149-M:11(II) requires that the solid waste capacity needs of the state be met while minimizing adverse environmental, public health and long-term economic impacts.

I. The NHDES-WMD erred when it determined that the application met the requirement of a short- and long-term need under RSA 149-M:11(III)(a).

The Town appeals the NHDES-WMD issuance of the Standard Permit, challenging the public benefit finding as to capacity, required under RSA 149-M:11(III)(a). Because RSA 149-M:11(IX) requires the Department to deny an application if the applicant fails to demonstrate that it satisfies the criteria under Paragraph III, the issuance of the Stage IV permit by the Department is contrary to the statute and is arbitrary and capricious.

Under RSA 149-M:11(III) the Department shall determine whether a proposed

facility provides a substantial public benefit based on, *inter alia*, “(a) The short- and long-term needs for a solid waste facility of the proposed type, size, and location to provide capacity to accommodate solid waste generated within the borders of New Hampshire . . .” NHDES-WMD, in a “Capacity Needs Analysis” issued on March 7, 2003, has determined that the solid waste needs of the state are currently met through 2013 without issuing the Stage IV Standard Permit. See Exhibit N. This means that there is no short-term need under RSA 149-M:11(III)(a). NCES is scheduled to completely fill Stage III in June of 2005. NCES plans to start placing waste in Stage IV in November of 2004 even though the NHDES Capacity Needs report has determined there is no short-term capacity need. RSA 149-M:11(III)(a) requires the NHDES-WMD to determine whether a proposed facility provides a substantial public benefit under criteria including the short- and long-term need for a facility. Because there is no short-term need through 2013, the issuance of the permit is contrary to the statute and arbitrary and capricious.

RSA 149-M:11(V)(d) indicates that “[i]f such a shortfall is identified, a capacity need for the proposed type of facility shall be deemed to exist **to the extent that the proposed facility satisfies that need.**” (emphasis added) According to the NHDES-WMD “Capacity Needs Analysis” report, even with NCES’s Stage IV permit, there would still be a shortfall after 2013. If the state will still have a capacity shortfall after 2013, then the Stage IV Permit only addresses capacity needs in the short-term. As noted above, however, the state does not have a short-term shortfall in capacity. The excess increase in capacity during the adequate disposal capacity years, therefore, does nothing toward meeting the statutory requirement to ensure that adequate capacity exists within

the state to accommodate the waste generated within the borders of New Hampshire, as required under RSA 149-M:11(I)(a) and (b). Because the standard permit does not meet the requirements under RSA 149-M:11(I)(II) or (III), under RSA 149-M(IX) requires NHDES-WMD to deny the permit. The Council should therefore overrule the NHDES-WMD and deny the applicant's permit.

II. The NHDES-WMD erred when it interpreted RSA 149-M:11(V)(c) and (d) to include only those landfills that had valid standard permits.

Under RSA 149-M:11(V)(c), the NHDES-WMD interprets existing capacity to be all landfill capacity for which there is a valid standard permit. See Exhibit M, p. 10. The Capacity Needs Analysis report, however, factored in two proposed facilities (NCES's Stage IV and Mt. Carberry's). NHDES-WMD, therefore, erred in not considering that the Turnkey Landfill Rochester ("TLR"), which can accommodate additional expansion to meet the long-term capacity shortfall, also has a planned expansion. Although an expansion permit has not yet issued, the NHDES-WMD is well aware of the plans. Further, Turnkey, owned by Waste Management Systems, has its local zoning permits, including a recently rezoned area to accommodate the planned TLR expansion. See Exhibit P. It is reasonable to infer from this zoning approval that the local host municipality's concerns have been alleviated in the community of Rochester, thereby meeting the requirement under RSA 149-M:11(IV)(a).

II. The NHDES-WMD erred in issuing the permit, because the ability of the facility does not assist the state in achieving the implementation of the hierarchy and goals under RSA 149-M:2 and M:3, as required under RSA 149-M:11(III)(b).

RSA 149-M:2 sets out that the goal of the state, by the year 2000, is to achieve a 40% minimum weight diversion of solid waste land-filled or incinerated on a per capita basis. According to NCES's Stage IV application, the state is nowhere near achieving this goal, as the state is currently achieving only a 23% weight diversion rate. See Stage IV Application, §X1, p. 14. Because expanding landfill capacity at a time when short-term capacity needs are being met will do nothing toward achieving a greater weight diversion rate, the issuance of the permit does not implement the hierarchy and goals under RSA 149-M:2 and M:3. In order to make up for lost ground, it is not unreasonable to suspend the issuance of landfill solid waste facility permits until the state makes up for this lost ground, and to make sure that the goals enunciated in RSA 149-M are met—or at least progress toward those goals are taken seriously.

C. **THE NHDES-WMD ERRED WHEN IT DID NOT REQUIRE NCES TO CORRECT ITS INCOMPLETE APPLICATION PURSUANT TO RSA 149-M:9(X) AND ENV-WM 314.07.**

Despite the Town bringing to the attention of the NHDES-WMD an omission in NCES's Stage IV application, regarding the requirement that the applicant identify and provide the status of other required permits and approvals, including all local permits or approvals which are or may be required for the facility, NHDES-WMD never required NCES to amend its application. See Exhibit Q. RSA 149-M:9(X) indicates that the Department shall not issue a permit for a solid waste facility unless the facility meets the terms and conditions required in rules adopted by the Commissioner. NCES failed to disclose the status of local zoning approvals as required by Env-Wm 314.07. This failure

renders the Stage IV permit application incomplete. It is not enough that NHDES-WMD is aware of the current litigation in Grafton County Superior Court between the Town and NCES regarding local approvals. The NHDES-WMD cannot ignore its own rules. Such an action by the NHDES-WMD is contrary to the statute and the NHDES-WMD's rules and is both arbitrary and capricious. This should be enough evidence in and of itself to meet the burden of proof required by Env-WMC 203.16 to overturn the NHDES-WMD's issuance of the Stage IV permit.

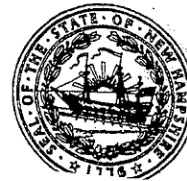
D. THE NHDES-WMD ERRED WHEN IT REFUSED TO GRANT THE TOWN'S REQUEST FOR A SECOND PUBLIC HEARING.

RSA 149-M:11(IV)(a) requires the NHDES-WMD to hold at least one public hearing for a facility of this nature. The NHDES-WMD held such a hearing on October 8, 2002. The Town, however, after discovering it did not have a complete version of the application, requested a second hearing be scheduled. The Town believes that the NHDES-WMD's refusal to schedule a second public hearing was arbitrary and capricious and renews its request for a second public hearing. Read as a whole, RSA 149-M:11(IV)(a) requires the WMD to consider the concerns of the host municipality's governing body. The request of the Board of Selectmen for a second public hearing should have been granted, and it was in error for NHDES-WMD to deny that request.



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



March 13, 2003

Town of Bethlehem
Docket #
Exhibit A — 03-05 WMC

Mr. John Gay
North Country Environmental Services, Inc.
3 Pitkin Court
Montpelier, VT 05602

**Subject: Standard Permit No. DES-SW-SP-03-002 and Waiver Request Denial
for North Country Environmental Services Stage IV Development,
Located at Trudeau Road, Bethlehem, NH**

Dear Mr. Gay:

Enclosed herewith is Standard Permit No. DES-SW-SP-03-002 which authorizes the footprint of the Stage IV Development at the above noted location. This permit is issued by the New Hampshire Department of Environmental Services, Waste Management Division (Department) pursuant to the provisions of RSA 149-M:9 and Part Env-Wm 314 of the New Hampshire Solid Waste Rules (Rules), as adopted October 27, 1997 and amended December 1, 1998, March 31, 2000, and August 12, 2000.

The waiver request to develop Stage IV over Stage I without a leak detection system designed in conformance with Env-Wm 2505.07 has been denied. The Department believes that the criteria for waiver in Env-Wm 202.04 have not been met. Development over Stage I may be accomplished per Permit Condition 5.(b).

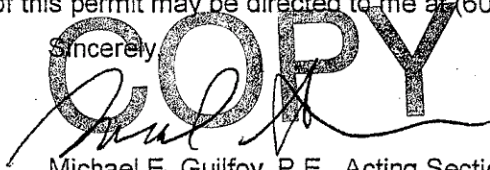
Please carefully review all terms and conditions of the permit, including all rules that are cited therein. If there are any questions concerning any requirement, please contact this office for clarification. It is important that you clearly understand all requirements.

At this time, your attention is specifically directed to Env-Wm 2804.01(a)(1)b. which requires the permittee to obtain approval for the applicable design plans and specifications for construction pursuant to the provisions of a type II permit modification.

Please maintain a copy of this permit with your facility file records for future reference and conspicuously post a copy of the permit at the facility. In addition, you should have available a full copy of the New Hampshire Solid Waste Rules for reference in correctly administering the provisions of your permit. Copies of the Rules are available from the Public Information & Permitting Office at (603) 271-2975 or on the Department's website at www.des.state.nh.us.

Questions regarding the issuance of this permit may be directed to me at (603) 271-6467.

Sincerely,


Michael E. Guilfoyle, P.E., Acting Section Supervisor
Permitting & Design Review Section
Waste Management Division

Enclosure: Solid Waste Management Facility Standard Permit No. DES-SW-SP-03-002

cc: Richard Reed, SWMB / SWMB files

PJP

Town of Bethlehem

Solid Waste Management District Member Towns:

- Town of Dalton
- Town of Easton
- Town of Franconia
- Town of Lancaster
- Town of Littleton
- Town of Sugar Hill

Scott Shillaber, P.E.; Sanborn, Head & Associates



SOLID WASTE MANAGEMENT FACILITY STANDARD PERMIT

as authorized by the

NH Department of Environmental Services, Waste Management Division (Department)
pursuant to RSA 149-M and Part Env-Wm 314 of the New Hampshire Solid Waste Rules (Rules)

I. PERMIT/FACILITY IDENTIFICATION:

Permit No.: DES-SW-SP-03-002

Permittee: North Country Environmental Services, Inc.

Facility Name: North Country Environmental Services Stage IV Development

Facility Location: Trudeau Road, Bethlehem, NH; Tax Map 419, Lot No. 1.

Facility Description: The Stage IV Development is a double lined landfill for the disposal of the types of waste listed in Condition 7(d) of the permit and as may be amended subsequent to the issue date of this permit. The footprint will consist of 11.05 acres located to the north of Stages I and II and will be developed in two phases. Stage IV will be constructed adjacent to and will tie into the liner system of Stages I and II. The facility has a capacity of 2,050,000 cubic yards with a life expectancy of 10.5 years.

Facility Type: Lined Landfill

Service Type: Commercial

II. FILE REFERENCE/RECORD OF APPLICATION:

Date(s) Received: April 03, 2002; June 28, 2002; August 14, 2002; February 28, 2003

WMD Log #(s): 200200068; 200200191; 200200192; 200300057

III. TERMS AND CONDITIONS: The permittee shall comply with the requirements of RSA 149-M, the New Hampshire Solid Waste Rules, Env-Wm 100-300 & 2100-3700 (Rules) and the attached terms and conditions, as amended.

IV. AUTHORIZATION: Pursuant to RSA Chapter 149-M and Env-Wm 314, this permit is hereby issued to the permittee as identified in Section I above to construct and operate the solid waste management facility identified in Section I above, subject to the terms and conditions in Section III above. This authorization is based on information and representations provided to the Department by the permittee, in documents referenced in Section II above. If the information is false, misleading or incomplete, the permit may be revoked or suspended in accordance with Env-Wm 306.

BY EXERCISING ANY RIGHTS UNDER THIS PERMIT, THE PERMITTEE HAS AGREED TO ALL TERMS AND CONDITIONS OF THE PERMIT. Failure to comply with these terms and conditions could result in civil or criminal penalties, suspension or revocation of the permit. No liability is incurred by the State of New Hampshire by reason of any approval of this solid waste facility. Approval by the Department is based on plans and specifications supplied by the permittee. No warranty/guarantee is intended or implied by reason of any advice given by the Department or its staff.

This permit shall not eliminate the permittee's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district and local permits, ordinances, laws, approvals or conditions relating to the facility.

COPY
Philip J. O'Brien, Ph.D. (P.G.) Director
Waste Management Division

March 13, 2003
Date

Contact the Waste Management Division, 6 Hazen Drive, Concord, NH [telephone (603)-271-2900] if there are questions.

TERMS AND CONDITIONS

1. **Citations and Definitions:** This permit has been prepared on the basis of the New Hampshire Solid Waste Rules, Env-Wm 100-300 & 2100-3700 (Rules), as adopted on October 29, 1997 and amended December 1, 1998 and March 31, 2000. Accordingly, the meaning of specific terms in this permit conform to the definitions set forth in Env-Wm 102.
2. **General Requirements:**
 - (a) This facility shall comply with the requirements of RSA 149-M, the Rules, as may be amended from time to time, and the terms and conditions of this permit.
 - (b) The development and operation of this facility is expected to conform to the proposal submitted in the permit application documents cited by Condition 3 of this permit.
 - (c) Where conflicts may exist between the proposal represented in the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall apply.
3. **Basis of Approval/Supporting Documentation:** This facility is permitted on the basis of information provided by the permittee in permit application documents identified as follows:
 - (a) Standard Landfill Permit Application documents prepared by Sanborn, Head & Associates, Inc. (SHA) on behalf of North Country Environmental Services, Inc. (NCES) (ref: WMD Log # 200200068; received April 03, 2002);
 - (b) Completeness review comment response (ref: WMD Log # 200200191; received June 28, 2002)
 - (c) Notice of Filing return receipts (ref: WMD Log # 200200192; received August 14, 2002); and
 - (d) Response to technical review (ref: WMD Log # 200300057; received February 28, 2003).
 - (e) Written and oral testimony received at and subsequently to the October 8, 2002 public hearing.
4. **Facility Specific Siting Requirements:**
 - (a) This facility shall be sited in compliance with the following requirements, as in effect on the issue date of this permit:
 - (1) The landfill siting requirements identified in Env-Wm 2504;
 - (2) The universal siting requirements identified in Env-Wm 2703;
 - (3) The additional siting requirements identified in Env-Wm 2802; and
 - (4) All terms and conditions of this permit.
 - (b) The footprint of this facility shall be as shown on design plan sheet no. 1 of 28 (entitled "Stage IV Design North Country Environmental Services, Inc. Bethlehem New Hampshire Overall Site Plan") in the permit application documents.
5. **Facility Specific Design Requirements:**
 - (a) This facility shall be designed in compliance with the following requirements, as in effect on the issue date of this permit and as may be amended subsequent to the issue date of this permit:
 - (1) The landfill design requirements identified in Env-Wm 2505;
 - (2) The universal design requirements identified in Env-Wm 2704;
 - (3) The additional design requirements identified in Env-Wm 2803; and

- (4) All terms and conditions of this permit.
- (b) Development over Stage I shall incorporate a liner and leak detection system in conformance with all applicable requirements of Env-Wm 2505. If a liner system is placed over Stage I, the permittee shall submit a settlement monitoring plan designed to monitor the performance of the liner system over Stage I. Such plan shall include:
- (1) Monitoring the actual settlement of the liner system over Stage I; and
 - (2) Calculating and/or monitoring the actual strain in the liner system.
6. **Facility Specific Construction Requirements:**
- (a) This facility shall be constructed in compliance with the following requirements, as in effect on the issue date of this permit and as may be amended subsequent to the issue date of this permit:
- (1) The landfill construction requirements identified in Env-Wm 2505;
 - (2) The additional construction requirements identified in Env-Wm 2804; and
 - (3) All terms and conditions of this permit.
- (b) Prior to commencing construction of this facility, or any phase or portion thereof, the permittee shall:
- (1) Obtain approval for the applicable design plans and specifications pursuant to the provisions for a Type II permit modification in Env-Wm 315;
 - (2) Obtain approval for preliminary plans to close the facility as though the phase being constructed is the terminal phase; and
 - (3) After complying with (1) and (2) above, file a notice of intent to construct as specified in Env-Wm 2804.02.
 - (4) The Applicant shall submit for Department approval, a scope of work for assessment and potential removal of soil north of Stage I by evaluating the presence and extent of residual contamination in vadose zone soils.
7. **Facility Specific Operating Requirements:**
- (a) **Facility Type:** This facility shall function as a landfill in accordance with the provisions of Env-Wm 2500, for the solid waste specified in Conditions 7(d) and 7(e) below.
- (b) **Facility Capacity:** The physical limits of this facility shall be as shown on Figure 6 of WMD Log # 200300057 (entitled "Stage IV Overlay Area Plan") in the permit application documents, which provides for the following anticipated capacity:
- (1) The in-place volume of wastes to be received at this facility is estimated to be 2,050,000 cubic yards which, based on current landfilling practices, is estimated, by the permittee, to equate with 1,476,000 tons. The actual tonnage may be different, depending on such factors as actual waste composition, compaction effort, settling, and daily cover practices.
 - (2) The expected tonnage to be received at the facility on a yearly basis is 140,000 tons per year, on average annually, subject to the requirements of Condition 7(f) below.
 - (3) The facility life expectancy is 10.5 years minimum, subject to the requirements of Condition 7(f) below.
- (c) **Service Type and Area:** This facility is a commercial facility, as defined by Env-Wm 102.37.

- (d) **Authorized Wastes:** This facility is authorized to accept the following types of solid waste only, except if restricted by Condition 7(e) below:
- (1) Municipal solid waste, as defined by Env-Wm 102.108;
 - (2) Construction and demolition debris, as defined by Env-Wm 102.42; and
 - (3) Other solid wastes, as listed below, which have been determined to be non-hazardous pursuant to Env-Wm 502 and which have received written approval of the Department before being accepted. Approval by the Department shall be based on information provided by the permittee that identifies the source, type, quantity, physical characteristics and analytical characteristics of the waste.
 - a. Waste from industrial processes;
 - b. Waste from pollution control processes including but not limited to water and wastewater treatment sludges and air pollution control residues;
 - c. Residue from a spill of a chemical substance or commercial chemical product or a waste listed above;
 - d. Commercial products which are off-specification, outdated, or unused;
 - e. Waste produced during the demolition or dismantling of industrial process equipment;
 - f. Ash managed in accordance with Env-Wm 2602;
 - g. Contaminated soils and media managed in accordance with Env-Wm 2603; and
 - h. Other non-hazardous solid waste not specifically identified above that requires special handling prior to disposal. For example, wastes with excessive moisture content, fine particulate (i.e., dusty) wastes, and any waste that is not identifiable prior to analytical characterization.
- (e) **Prohibited Wastes:** This facility is not permitted to accept:
- (1) Hazardous wastes as defined by RSA 147-A:2 and the New Hampshire Hazardous Waste Rules, including hazardous waste from out-of-state conditionally exempt small quantity generators;
 - (2) Asbestos waste as defined in Env-Wm 102.14;
 - (3) Untreated infectious waste;
 - (4) Contained gaseous waste;
 - (5) Liquid wastes (i.e., waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846));
 - (6) Wet cell batteries;
 - (7) Leaf and yard wastes;
 - (8) Whole tires;
 - (9) White goods;
 - (10) Radioactive materials as defined and regulated by the New Hampshire rules for the control of radiation, He-P 2000 and He-P 4000; and
 - (11) Solid wastes identified in Condition 7(d)(3) that have not received prior written approval from the Department.
- (f) **Determination of Public Benefit:** As required by RSA 149-M:11, III and V, the Department has reviewed the projected 20 year solid waste disposal capacity needs for the state of New Hampshire in the short-term and the long-term on the date of permit issuance; the type, size, and location of the facility; the extent to which this facility can satisfy that need; and waste diversion activities of the applicant as outlined in its

application. Based on this review, the Department has determined that this facility can provide a substantial public benefit, as required by RSA 149-M:11, X, if facility operations conform to the following conditions:

- (1) As represented by the permittee in the permit application, the permittee shall operate this facility in a manner that provides 10.5 or more years of disposal capacity for New Hampshire solid waste generators. Although facility capacity may be depleted at a variable rate over the life of the facility, the permittee shall control the capacity depletion rate so as to fulfill the 10.5-year requirement in good faith, which shall preclude operating the facility at token capacity levels in order to achieve 10.5 years of life.
- (2) The permittee shall operate this facility in a manner that will assist in achieving the implementation of the hierarchy and goals under RSA 149-M:2 and 3 as required by RSA 149-M:11, III(b) and shall avoid to the extent possible the disposal of recyclable material in the landfill.
- (3) In its annual report (as required by Env-Wm 2805.07(b)), the permittee shall provide a capacity availability analysis that identifies the remaining facility life span based on current and historic rates of use and the total projected life of the facility.
- (4) If the total projected life identified in any annual report is less than 10.5 years, the permittee shall identify measures to be taken to adjust facility operations to provide at least 10.5 years of total facility life.
- (5) In its annual report, the permittee shall provide information to clearly demonstrate:
 - a. How facility operations have assisted and will continue to assist the State in achieving the hierarchy of waste management methods and goals of RSA 149-M:3; and
 - b. How facility operations have complied with the requirements of RSA 149-M:2.
- (6) If the Department is not satisfied that the information provided by the permittee per paragraphs (4) and (5) above meets the requirements of RSA 149-M:11, the Department may, in accordance with Env-Wm 306, take one or more of the following actions:
 - a. Set a maximum disposal rate for the facility, subject to annual readjustment based on remaining facility capacity and actual capacity need projections; and/or
 - b. Stipulate other appropriate controls for assuring that the facility continues to provide a substantial public benefit.
- (g) This facility shall operate in compliance with the following requirements, in effect on the issue date of this permit and as may be amended subsequent to the issue date of this permit:
 - (1) The landfill operating requirements identified in Env-Wm 2506;
 - (2) The universal operating requirements identified in Env-Wm 2705;
 - (3) The additional operating requirements identified in Env-Wm 2805; and
 - (4) All terms and conditions of this permit.
- (h) Prior to commencing operation of this facility, or any phase or portion thereof, the permittee shall:

- (1) Assure financial responsibility for facility closure in accordance with the provisions of a financial assurance plan approved pursuant to the provisions for a type II permit modification in Env-Wm 315 and by submitting all original signed financial assurance documents required to verify the plan has been implemented and is in effect;
- (2) Complete facility construction in accordance with all applicable construction requirements and submit all construction status reports, including construction inspection reports, as specified in Env-Wm 2804.07; and
- (3) After complying with (1) and (2) above, file a notice of intent to operate as specified in Env-Wm 2805.02.

8. **Facility Specific Closure Requirements:**

- (a) Closure of this facility shall comply with the following requirements, as in effect on the issue date of the permit and as may be amended subsequent to the issue date of the permit:
 - (1) The landfill closure requirements identified in Env-Wm 2507;
 - (2) The universal closure requirements identified in Env-Wm 2706;
 - (3) The additional closure requirements identified in Env-Wm 2806; and
 - (4) All terms and conditions of this permit.

9. **Facility Specific Financial Assurance Requirements:**

- (a) The permittee shall comply with the financial assurance requirements for closure and post-closure of the landfill identified in Env-Wm 3100, as in effect on the issue date of this permit and as may be amended subsequent to the issue date of this permit.
- (b) Prior to commencing any modified operation of this facility, or any phase or portion thereof, the permittee shall assure financial responsibility for facility closure in accordance with the provisions of an approved financial assurance plan.

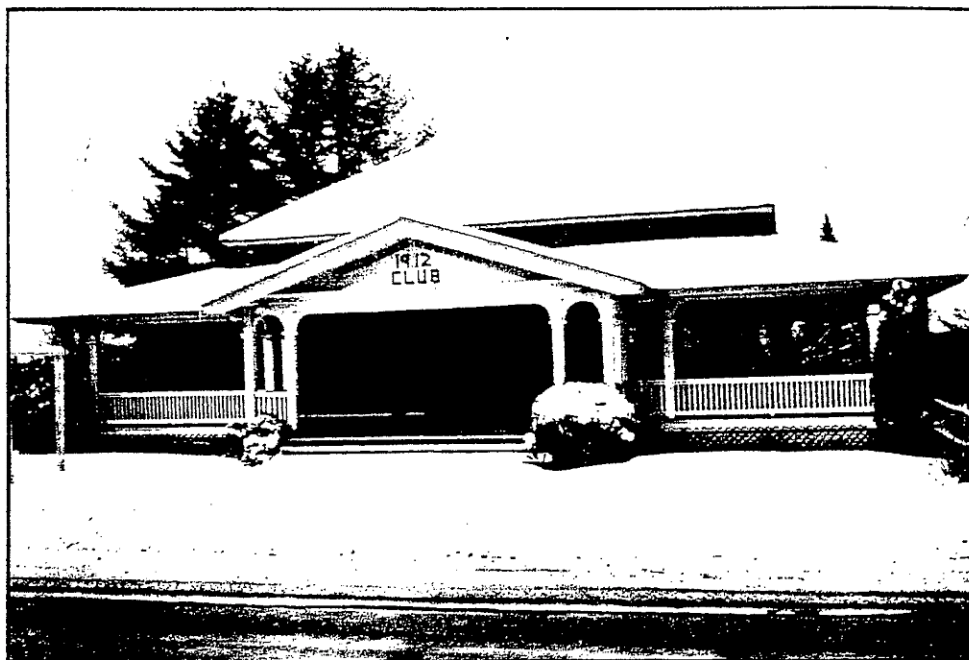
Town of Bethlehem

Docket #

Exhibit B

03-05 WMC

1987 ANNUAL REPORT



Town of
Bethlehem, New Hampshire



Article 6. Are you in favor of the adoption of Amendment No. 5 (as proposed by petition) to the Town Zoning Ordinance as follows:

Amend "General Provisions" by the addition to paragraph 6, namely "Further no solid waste disposal facility or site shall be located in any district except a facility operated by the Town. This prohibition shall include but not be limited by any private solid waste disposal facility or site, sanitary landfill or incinerator." (The Planning Board approves of this amendment)

Yes

No

Article 7. Are you in favor of the adoption of the amendment as proposed by the Planning Board for the Town Zoning Ordinance as follows:

To adopt the proposed Model Flood Development Ordinance to replace the present Flood Plain provisions.

Yes - 442

No - 90

EVENING SESSION

Moderator Alistair MacBain called the meeting to order at 8:34 P.M. in the Town Building. The Moderator began by making apologies for starting late, due to a 70% turn-out of voters.

Article 1. Acted upon by ballot vote. The Moderator read the results of Article 1, and declared the following duly elected: Karleen J. Sanborn, Town Clerk; Daniel Tucker, Selectmen; Nancy Dickowski, Treasurer; Pauline Keach, Tax Collector; Howard Sanborn, Constable; Theodore O. Read III, Road Agent; Barbara M. Cabaup, Melanie Harding, Cheryl Sargent, Library Trustees; Trustee of Trust Funds, both two and three year terms, to be determined by the Selectmen.

Article 2. Acted upon by ballot and adopted.

Article 3. Acted Upon by ballot and adopted.

Article 4. Acted upon by ballot and adopted.

Article 5. Acted upon by ballot and failed.

Article 6. Acted upon by ballot and adopted.

Article 7. Acted upon by ballot and adopted.

Selectman Gerald had been consulted re situation. The Artic

The Moderator ma

(a) There would

(b) The Girl Sco

(c) We have micr recorded so please st

(d) All nonresid the sides of the hall

Article 8. (539 seconded To raise suc defray Town charges f of the same:

With considerabl duly voted and carrie for the purchase of a Department appropriat and expenses relating Playground, Little Le League uniforms.

RESULT: To rais defray Town charges i of the same:

Town Officers' Sala:
Town Officers' Expe:
Planning and Zoning
Legal Expenses
Police Department
Fire Department
Forest Fire Warden
Out-of-District Hyd
Elections and Regis
Town Buildings
Town Lines
Town Signs
Civil Defense
Vital Statistics
Street Lighting
Reappraisal of Proj
Insurance (Includi:
Health Officer

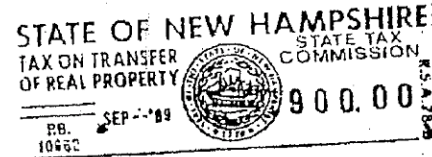
Town of Bethlehem

Docket #

Exhibit C

03-05 WMC

WARRANTY DEED



KNOW ALL MEN BY THESE PRESENTS that we, Roy L. Sanborn, married, of Town of Bethlehem, County of Grafton, State of New Hampshire, and Barry Hager (a/k/a Barry Hagar), married, of City of Dover, County of Strafford, State of New Hampshire, as tenants in common, for consideration paid grant to Sanco, Inc., a business corporation duly organized under the laws of the State of New Hampshire with a mailing address of 100 Hall Street, Concord, NH 03301 (P.O. Box 1464, Concord, NH 03302-1464) with Warranty Covenants:

Two certain parcels with any buildings and improvements thereon located in the Town of Bethlehem, County of Grafton, State of New Hampshire, southwest of the intersection of Route 302 and Muchmore Road (also known as the road leading to the old CCC Camp) bounded and described as follows:

Tract 1

A certain tract shown as Lot B on a plan entitled "Subdivision Plan for Harold Brown, et al. and Roy L. Sanborn, et al. as prepared by Gordon E. Ainsworth & Associates, Inc., dated February 7, 1985 and recorded in the Grafton County Registry of Deeds as Plan 12598.

Tract 2

A certain tract of land situate on the easterly side of Trudeau Road containing 7.29 acres, more or less, bounded and described as follows:

Beginning at an iron pin in the easterly line of Trudeau Road, so called, said pin lying 202.4 ft northerly along said line from the northwest corner of land of the United States of America



016154

BK1822 Pg0427

Thence running N 22°48'20" E along said easterly line of Trudeau Road, 386.2 ft to a point.

Thence running northerly along said easterly line on a curve of 1755.3 ft radius a distance of 68.9 ft to an iron pin.

Thence running S 75°58'35" E along a blazed line and land now or formerly of Pauline McDonell Brown and Luigi J. Castello 659.6 ft to an iron pin in the westerly line of land now or formerly of Brown.

Thence running S 10°47'54" W partly along an old wire fence and blazed line and along land now or formerly of Brown and land now or formerly of Tucker 450.7 ft to an iron pin.

Thence running N 75° 58'35" W along a blazed line of land now or formerly of Pauline McDonell Brown and Luigi J. Castello 753.4 ft to the point of beginning.

Containing 7.29 acres, more or less.

Being Lot 2 on a certain plan entitled Castello Subdivision "Trudeau Road East" Bethlehem, N.H. as surveyed August 1984 by Phoenix Hill Associates, Littleton, N.H. bearing Bethlehem Planning Board Approval dated September 25, 1984 and recorded as Plan #4255 in the Grafton County Registry of Deeds.

Parcel is not to be used for dumping or deposit of waste or refuse of any kind.

Any through road built across the above parcel will be at least 100 feet from both the north and south boundaries.

Meaning and intending to describe and convey Lots 3 and 6 of Plan of Land for Sanco Incorporated prepared by Cartographic Associates, Inc., 3/24/89, amended August 31, 1989 to be recorded at Grafton County Registry of Deeds on near or even date herewith.

This is not homestead property.

BK1822 Pg0428

IN WITNESS WHEREOF we have hereunto set our hands this 11th
day of September 1989.

Date 9/11/89

COPY
Roy L. Sanborn
Roy L. Sanborn

Date 9/11/89

COPY
Barry Hager
Barry Hager

STATE New Hampshire
COUNTY Rochester

On this, the 11th day of September 1989, before me, the undersigned officer, personally appeared Roy L. Sanborn, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed same for the purposes herein contained.

COPY
Louise Murphy
Justice of the Peace/Notary Public
LOUISE MURPHY, Notary Public
My Commission Expires July 7, 1991

STATE OF New Hampshire
COUNTY OF Rochester

On this, the 11th day of September, 1989, before me, the undersigned officer, personally appeared Barry Hager, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed same for the purposes herein contained.

RECEIVED
89 SEP 13 AM 10:38
GRAFTON COUNTY
REGISTRY OF DEEDS

COPY
Lee Ann Ward
Justice of the Peace/Notary Public
LEE ANN WARD, Notary Public
My Commission Expires June 4, 1991

BK 1822 PG 0429

Town of Bethlehem

Docket # _____

Exhibit D

03- 05 WMC

1992 ANNUAL REPORT



Town of
Bethlehem, New Hampshire

RESULTS OF THE 1992 WARRANT

Moderator, Alistair D. MacBain, declared the polis open at 9:00 A.M. at the Town Building on Tuesday, the 10th of March, 1992. It was moved by Lorna Ray and seconded by Pauline Keach to proceed to vote by ballot on Articles 1 and 2 and delay the reading and action of the other Articles in the Warrant until the evening session. The motion carried. At 6:00 P.M. the Moderator declared the polls closed and the ballots counted. The results of the ballot counting for the above Articles was as follows:

Total Votes Cast - 206

The following officers were elected under Article 1:

Karleen J. Sanborn, Town Clerk, 179 votes, elected
 "Jack" John Anderson, Selectman, 174 votes, elected
 Nancy Dickowski, Treasurer, 177 votes, elected
 Pauline Keach, Tax Collector, 174 votes, elected
 Howard E. Sanborn, Constable, 151 votes, elected
 George E. Tucker, III, Road Agent, 174 votes, elected
 Pauline Keach, Library Trustee, 166 votes, elected
 Elizabeth Harrington, Library Trustee, 173 votes, elected
 Frances Lavoie, Library Trustee, 10 votes (write-in), elected
 Lorna Ray, Supervisor of the Checklist, 173 votes, elected
 Ann Sykes, Supervisor of the Checklist, 164 votes, elected
 Ruth Miller, Trustee of the Trust Funds, 2 votes (write-in)
 Mike McIntyre, Trustee of the Trust Funds, 2 votes (write-in)
 Mortimer Fisch, Trustee of the Trust Funds, 2 votes (write-in)

ARTICLE 2 Are you in favor of changing the Zoning Ordinance in ARTICLE SIX of the 1987 Bethlehem Warrant which currently reads: "Further no solid waste disposal facility or site shall be located in any district except a facility operated by the Town. This prohibition shall include but not be limited by any private solid waste disposal facility or site, sanitary landfill or incinerator":

The revised ordinance would read as follows:

"Further no solid waste disposal facility, site or expansion of any existing landfills shall be located in any district except a facility operated by the Town. This prohibition shall include but not be limited by any private solid waste disposal facility or site, sanitary landfill or incinerator." (Ballot vote) (Planning Board approves of this Amendment.)

Yes - 144

Article passed

EVENING SESSION

Moderator, Alistair D. MacBain called the meeting to order at 8:00 p.m. at the Bethlehem Elementary School gymnasium. The Moderator made several announcements before proceeding with the Warrant Articles.

ARTICLE 1 Acted upon by declared the following duly elected Selectman; Nancy Dickowski, Constable; George E. Tucker, III, Keach, Library Trustee; Fran Checklist; Ann Sykes, Supervisor people received two each write Ruth Miller, Mike McIntyre and

ARTICLE 2 Acted upon by

ARTICLE 3 (\$1,500.00 approved by Lorna Ray, to see if the Town Five Hundred Dollars (\$1,500 storage, collection and transportation processing facility.

With little discussion the Article

ARTICLE 4 (\$2,000.00 approved seconded by Bruce Brown, to Two Thousand Dollars (\$2,000 Hospital.

With little discussion the Article

ARTICLE 5 Motion was if the Town will vote to raise for the purpose of providing the Moderator requested a statement

ARTICLE 6 (\$1,017.00 approved by Paul Lister, to see if the Town Seventeen Dollars (\$1,017.00 of the Littleton Area.

After some discussion the Article

ARTICLE 7 Motion was see if the Town will vote to Road, which now has three the Bethlehem Planning Board the satisfaction of the Town Board

With considerable discussion

ARTICLE 8 A motion was see if the Town Library can Meeting, money from the sum

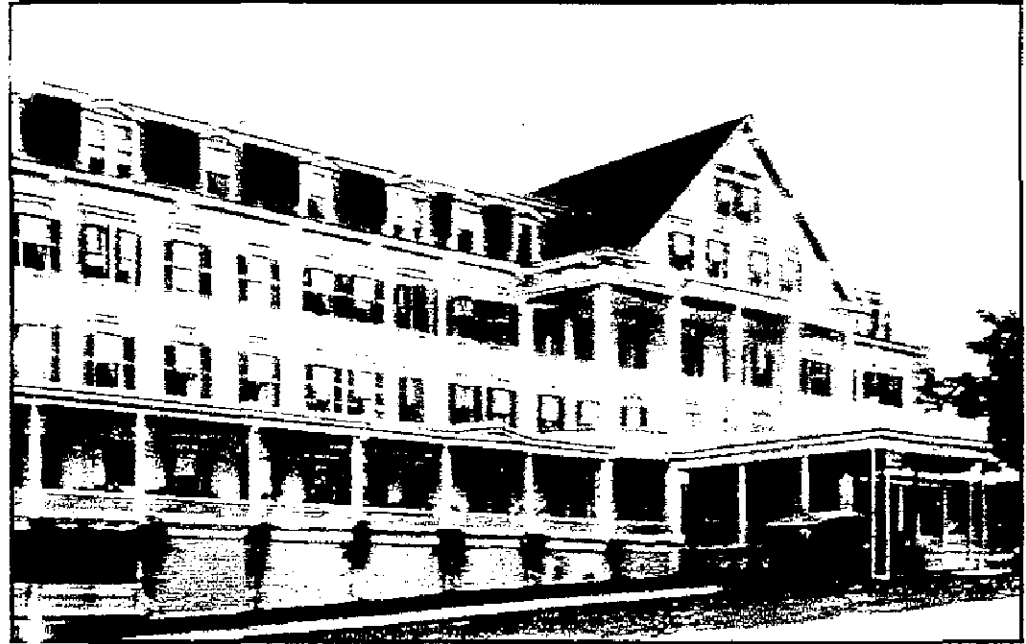
Town of Bethlehem

Docket #

Exhibit E

03-05 WMC

2000 ANNUAL REPORT



Sinclair Hotel ~ Main St ~ 1865 to 1978
Destroyed by Fire ~ Flea markets held on site

**Town
of
Bethlehem,
New Hampshire**

RESULTS OF THE 2000 TOWN MEETING WARRANT

Moderator, Alistair D. MacBain, declared the polls open at 9:00 a.m. at the Town Building on the 1st day of March 2000. It was moved by Judy Gagne and seconded by Dianne Lambert to proceed to vote on Articles 1 through 5 and delay the reading and action of the other Articles in the Warrant until the business meeting on Saturday, March 18th, 2000. The motion carried. At 6:00 p.m., the Moderator declared the polls closed and the ballots were counted.

Moderator MacBain called the business meeting to order on Saturday, March 18, 2000 at 9:00 a.m. at the Bethlehem Elementary School Auditorium.

Present were Selectman Raymond Bushway, Bradley Presby, David Wood and John L. Wedick Jr.

Absent: Selectman Norman Brown.

ARTICLE 1. To choose all necessary Town Officers for the ensuing year.

Total Votes Cast - 549

Raymond Bushway, Selectman - 273 -Pending a recount on
Friday, March 24, 2000 at 4:30 p.m.

George Manupelli, Selectman- 267 -Pending a recount on Friday,
March 24, 2000 at 4:30 p.m.

Alistair D. MacBain, Moderator- 498 -Elected

George E. Tucker III, Road Agent- 483 -Elected

Phil Davis, Supervisor of the Checklist- 451 -Elected

Ruth Miller, Trustee of the Trust Fund (1 yr.) -5 write in

David Kerr, Trustee of the Trust Fund (1 yr.) -30 write in - Elected

Don Lavoie, Trustee of the Trust Fund (3 yr.) -25 write in

David Kerr, Trustee of the Trust Fund (3 yr.) -6 write in - Elected

Florence Houghton, Library Trustee (3 yr.) - 396 - Elected

Rhonda M. Lyster, Library Trustee (3 yr.) - 421 - Elected

Molly B. Noonan, Library Trustee (3 yr.) - 372 - Elected

ARTICLE 2. Are you in favor of the adoption of amendment No. 1 as presented by petition to amend the Bethlehem Zoning Ordinance by the inclusion of the following:

"To protect public health and welfare, and to protect surface and groundwater resources, the stockpiling and land spreading of municipal sewage sludge and industrial paper mill sludge is not allowed in the Town of Bethlehem.

"This ordinance shall not apply to sewage/septage/sludge generated within the Town of

Bethlehem, nor shall it apply to Class A sludge-derived products sold by the bag." (The Bethlehem Planning Board recommends the adoption of the Amendment. Results of vote taken: 5-1.)

Yes 415

No 118

ARTICLE 3. Are you in favor of the adoption of Amendment No. 2 as presented by petition to amend the Bethlehem Zoning Ordinance by the inclusion of the following:

"In the interest of Maintaining the highest level of visibility of the road, the further reduction of visibility of the road by minimizing energy wasted on lighting as follows:

"Any new outside lighting whether for illumination or other purpose, will project no light on the road or any associated reflector.

"An exception is allowed for the uplight illumination does not overshoot the road, all the direct light on the premises. Pr lit, but the edges of that wall and displays using multiple low wattage

"New signs: or newly illuminated light, with illumination from above, is a nuisance of hazard caused by glare overhead sign lighting can be made building uplighting above." (The B Amendment. Results of vote taken:

Yes 35

ARTICLE 4. Are you in favor of to amend the Bethlehem Zoning O

"To see if the Town will vote to amend Bethlehem Zoning Ordinance.

Item #6 currently reads: "Any use use is not injurious, noxious or of

Proposed Amendment would read: provided such use is not injurious reduce property values. This shall groundwater contamination, gl

Where scientific measurements are plain language and common sense "injurious, noxious and offensive." "well founded information" that this to take immediate steps to enforce Board does not recommend the at

Yes

ARTICLE 5. Are you in favor of the Regulations of the existing following language: "Additionally 95 (ninety five) feet.

General Provision 6, as revised, w

ING WARRANT

00 a.m. at the Town Building on
ed seconded by Dianne Lambert
reading and action of the other
urday, March 18th, 2000. The
his closed and the ballots where

on Saturday, March 18, 2000 at

sby, David Wood and John L.

e ensuing year.

count on
24, 2000 at 4:30 p.m.
out on Friday,
at 4:30 p.m.

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nt No. 1 as presented by petition to
the following:

se and groundwater resources, the
and industrial paper mill sludge is

generated within the Town of

products sold by the bag." (The
Amendment. Results of vote taken:

118

ment No. 2 as presented by petition
of the following:

"In the interest of Maintaining the historic character of the Town of Bethlehem, and preventing further reduction of visibility of the wonder of the night sky for us and our children, and minimizing energy wasted on lighting, the voters of Bethlehem agree to enact a lighting ordinance as follows:

"Any new outside lighting whether for area illumination, sign illumination, building illumination, or other purpose, will project no light rays above the horizon from the lamp, its lens structure, or any associated reflector.

"An exception is allowed for the uplighting of buildings, provided the lamps are so shielded that the illumination does not overshoot the building on the top and sides, the intent being to keep all the direct light on the premises. Properly done, the bulk of the illuminated wall will appear well lit, but the edges of that wall and the roof line will appear dark. "Seasonal/decorative lighting displays using multiple low wattage bulbs are exempted from this ordinance.

"New signs: or newly illuminated signs may be illuminated only by continuous indirect white light, with illumination from above, and with light sources shielded so that they will not constitute a nuisance or hazard caused by glare to neighbors, pedestrians, or drivers. An exception to overhead sign lighting can be made if the illumination is confined to the area of the sign as in the building uplighting above." (The Bethlehem Planning Board recommends the adoption of this Amendment. Results of vote taken: 6-0

Yes 352

No 183

ARTICLE 4. Are you in favor of the adoption of Amendment No. 3 as presented by petition to amend the Bethlehem Zoning Ordinance by the inclusion of the following:

"To see if the Town will vote to expand and clarify item "A" #6, under District No. 2" of the Bethlehem Zoning Ordinance.

Item #6 currently reads: "Any use customarily accessory to any of the above, provided such use is not injurious, noxious or offensive to the neighborhood."

Proposed Amendment would read: "Any use customarily accessory to any of the above, provided such use is not injurious, noxious or offensive to the neighborhood, or tend to reduce property values. This shall include dust, traffic, smoke, noise, litter, surface and groundwater contamination, glare, odors and other hazards.

Where scientific measurements are not available, or where the Bethlehem Zoning is not specific, plain language and common sense shall take precedent in defining and applying the words "injurious, noxious and offensive." Repeated complaints by reasonable persons shall constitute "well founded information" that this provision is being violated, requiring the Board of Selectmen to take immediate steps to enforce the provisions of these Regulation." (The Bethlehem Planning Board does not recommend the adoption of this amendment. Results of vote taken: 4-3.)

No 262

ARTICLE 5. Are you in favor of the adoption of Amendment No. 4 to General Provision 6 of the Regulations of the existing town zoning ordinance as proposed by petition, adding the following language: "Additionally no solid waste disposal facility shall have a height exceeding 95 (ninety five) feet.

General Provision 6, as revised, would read as follows:

"No person, persons, partnership, or corporation shall transport garbage or rubbish in an unsanitary manner or without the same being thoroughly protected from exposure or leakage; nor dump or leave the same in any place other than provided for said purposes. Further, no solid waste disposal facility, site or expansion of any existing landfills shall be located in any district except a facility operated by the Town. Additionally, no solid waste disposal facility shall have a height exceeding 95 (ninety-five) feet". The Bethlehem Planning Board recommends the adoption of this Amendment. Results of vote taken 5-1 abstention.

Yes-356

No-143

ARTICLE 6 To see if the Town will vote to raise, and appropriate the sum of money that may be necessary to satisfy the purposes specified in the budget as posted 2,105,041.00

Budget Total exclusive of Warrant Articles.

Motion made by: David Wood Seconded by: Bradley Presby
Vote: Article Passed

John Wedick Jr. started by highlighting the budget to save time and questions. He pointed out how the salaries were figured. John explained that we have a step scale in place for each position and an annual increase for cost of living.

Ted Wilkinson made a motion to amend Article 6 by increasing the legal expenses of Planning and Zoning by \$10,000. Ted Wilkinson went on to explain that it is very likely the Boards will have additional legal expenses coming up with the landfill expansion, the enforcement in "Junk Yard Ordinance" and gravel excavation. It troubles him (Ted Wilkinson) that the Selectboard does not know anything about Planning Board meetings and the allegations made that the Boards shop around for legal opinions. Katherine Rhoda seconded this Amendment.

Katherine Rhoda and Stephen Huntington spoke in favor of the amendment and explained why they thought it was a necessary increase. Steven Huntington said the Boards always use their budget very wisely.

Andrea Bryant - Is it true the Boards had to ask the Selectmen permission to use this money since it is under a one line item? Would the Planning and Zoning have to advise the Chairman or would they have to use the purchase order system?

Evelyn Hagen had some concerns about what would happen if the Selectboard said it was not a necessary use of money.

John Wedick Jr. said they would not have to get permission from all Selectboard members. They would have to advise the Chairman only and he would relay back to the other members. John Wedick Jr. also made it clear that the Board would not pay legal bills if the Board of Selectmen thought they (any of the Boards) were "opinion shopping".

Nancy Czarny made the motion to move this article.

A voice vote was taken. The results were NO.

Lon Weston asked for a division vote.

Yes 49

No 45

Increase in legal expense passes.

David Wood speaks about the comp of the Golf Course. They are inves Recreation Base. Recreation is a ver that the Country Club be municipa to turn a healthy profit and it will :

Leonard Malenowski questions wh

David Wood explains his philosop revenues to be significantly over

Bernie Kohn speaks in favor of kee to play golf and he hopes that it w run by the town.

Ben Gumm states that the Country that if it were sold it would be a g are run far better than publicly own investigate sincerely and thorough

Dick Robie spoke in favor of kee states that Bethlehem does not ne strain on the elderly. He would like service, in two years the whole ide people to do the billing and require be a major part of the budget.

Jane Lucas agrees with Dick Robie shameful to consider that Bethleh elderly but also the young without

Leonard Malenowski asks the q charge?"

John Wedick Jr. assured everyone t

Steven Hoyt moves Article 6. Se

Article 6 passes by voice vote.

ARTICLE 7. To see if the provisions of RSA 35:1 for the Building on Main Street and to designate the Board of Selectmen this appropriation.)

Motion made by

John Wedick Jr. explains that the money but urges this article be Wedick Jr. said that nothing wo interested buyers. If the Board d a plan for the building. This is an will be done until June 30th so

2000 ANNUAL REPORT



Sinclair Hotel ~ Main St ~ 1865 to 1978
Destroyed by Fire ~ Flea markets held on site

**Town
of
Bethlehem,
New Hampshire**

**TOWN OF BETHLEHEM
TOWN MEETING WARRANT**

To the inhabitants of the Town of Bethlehem, in the County of Grafton and the State of New Hampshire, qualified to vote in Town Affairs:

You are hereby notified to meet at the Fire Station in said Bethlehem on Tuesday, the thirteenth day of March, at nine o'clock in the morning (the polls to close at 8:00 p.m.); business meeting to be held at the Bethlehem Elementary School on Saturday, the twenty-fifth day of March, at 10:00 a.m. to act upon the following:

ARTICLE 1. To choose all necessary Town Officers for the ensuing year. (Ballot Vote)

ARTICLE 2. Are you in favor of the adoption of Amendment No. 1 to amend General Provision #6 of the Bethlehem Zoning Regulations by adding the following words to the last sentence:

"...Exceeding 95 (ninety-five) feet above the natural and undisturbed contour of the land under any existing or future landfill." (The Bethlehem Planning Board unanimously recommends the adoption of this amendment.)

YES

NO

ARTICLE 3. Are you in favor of the adoption of Amendment No. 2 to revise the existing Floodplain Ordinance section of the Bethlehem Zoning Ordinance as required by the New Hampshire Office of State Planning by the addition of the following:

1. Rewrite the opening paragraph to read: "The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its Flood Insurance Rate Maps dated April 15, 1986 which are declared to be a part of this ordinance and are hereby incorporated by reference." As the current statement does not reflect the correct map date, and includes references that are not relevant to Bethlehem's floodplain mapping.
2. Item I. Insert the following at the beginning of this section: "The following definitions shall apply only to this Floodplain Development Ordinance, and shall not be affected by the provisions of any other ordinance of the Town of Bethlehem."

"Area of special flood hazard" Rewrite this definition to read: "is the land in the floodplain within the Town of Bethlehem subject to a one percent or greater chance of flooding in any given year. The area is designated as Zone A on the FIRM," as the current definition relates to maps and special flood hazard areas (SFHA) that do not apply to Bethlehem.

\$ 0.00

23,505.00

\$ 23,505.00

22,490.22

22,490.22

\$ 1,014.78

\$ 1,014.78

12,500.00

\$ 13,514.78

31,182.00

31,182.00

(17,667.22)

\$ 17,667.22

**TOWN OF BETHLEHEM
TOWN MEETING WARRANT**

To the inhabitants of the Town of Bethlehem, in the County of Grafton and the State of New Hampshire, qualified to vote in Town Affairs:

You are hereby notified to meet at the Fire Station in said Bethlehem on [redacted] the [redacted] at nine o'clock in the morning (the polls to close at 6:00 p.m.) business meeting to be held at the Bethlehem Elementary School on Saturday, the [redacted] at [redacted] to act upon the following:

Article: 1 To choose all necessary Town Officers for the ensuing year. (Ballot Vote)

Total Votes Cast - 757

Florence Houghton	- Selectperson	- 220	- Not Elected
Willard (Butch) Lucas	- Selectperson	- 239	- Not Elected
George Manupelli	- Selectperson	- 366	- Elected
Judy Wallace	- Selectperson	- 380	- Elected
John L. Wedick, Jr.	- Selectperson	- 242	- Not Elected
Derek Brown	- Road Agent	- 276	- Not Elected
George Tucker, III	- Road Agent	- 444	- Elected
Tandy Girouard Brown	- Town Clerk	- 677	- Elected
Claudia Brown	- Tax Collector	- 487	- Elected
Sarah Riley	- Tax Collector	- 221	- Not Elected
Tracy L. Kenne	- Treasurer	- 444	- Elected
Darren Perkins	- Treasurer	- 118	- Not Elected
Patricia A. Bonardi	- Library Trustee	- 571	- Elected
Elizabeth Harrington	- Library Trustee	- 559	- Elected
Ruth Miller	- Library Trustee	- 640	- Elected
Allen Cummings	- Trustee of the Trust Fund	- 602	- Elected

Article: 2 Are you in favor of the adoption of Amendment No. 1 to amend General Provision #6 of the Bethlehem Zoning Regulations by adding the following words to the last sentence:

"...Exceeding 95 (ninety-five) feet above the natural and undisturbed contour of the land under any existing or future landfill." (The Bethlehem Planning Board unanimously recommends the adoption of this amendment.)

YES 537

NO 167

Brenda

Town of Bethlehem

Docket #

Exhibit G

03-05 WMC

From: Tom Roy [tomroy@aries-eng.com]
Sent: Tuesday, November 05, 2002 3:53 PM
To: mguilfooy@des.state.nh.us
Cc: Ed Boutin (E-mail); Brenda Keith (E-mail)
Subject: NCES IV Application Comments/Town of Bethlehem/2002-015



2002-015

BeutilfinalDES Ltr.doc



2002-015

publicn.comments.pdf



2002-015

NCES&wdspossa.pdf

Good afternoon Mike:

Attached in PDF format are Town of Bethlehem's additional comments from Ed Boutin and Aries Engineering on the NCES IV permit application. The first document is Ed's letter, the second document is Aries' letter, and the third document includes the tables attached to Aries' letter. I will also hand-deliver a copy to you today.

Regards.

Tom

Thomas Roy, P.E., P.G., L.S.P.
Principal Engineer/Geologist
Aries Engineering, Inc.
46 South Main Street
Concord, New Hampshire 03301
603-228-0008, Fax 603-226-0374
E-Mail: TomRoy@Aries-Eng.com
Web Site: www.Aries-Eng.com

November 5, 2002

New Hampshire Department of
Environmental Services
Solid Waste Division
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Re: Public Benefit Statement, Proposed Stage IV,
North Country Environmental Services, Inc., Bethlehem, New Hampshire

Gentlemen:

The following are some brief comments on the Public Benefit Statement of North Country Environmental Services, Inc. ("NCES"), referred to above. I am preparing this to be read in conjunction with the report of Aries Engineering, Inc. which is submitted together with this letter as part of the public record of this proceeding for permitting NCES' Phase IV landfill.

I will not reiterate here those arguments set forth in the Town of Bethlehem's request for a stay of this proceeding pending resolution by the Superior Court of the suit by NCES against the Town. As you know, this suit seeks to avoid all local regulation and threatens damages, to the extent the Town seeks to assert any of its local ordinances with regard to the landfill and particularly Phase IV.

NCES's Faulty Capacity Analysis: In response to the requirements of RSA 149-M:11,V, NCES limits its capacity analysis artificially by identifying "permitted facilities" as standard permit facilities with construction and operating approvals, and that a facility with only a standard permit would not meet this requirement. NCES concluded that since the DES projected capacity based on standard permit approvals, the DES would overstate capacity for the purpose of the public benefit criteria. However, the solid waste rules define a standard permit as a "permit to construct and operate a solid waste facility" which is consistent with the capacity assessment requirements of the public benefit analysis. NCES's interpretation does not adequately consider existing facilities which have expansion capacity and have not yet been specifically permitted. Contrast the information required in subsections V(c) dealing with permitted facilities and subsection V (d) of the statute, which considers existing facilities. This causes NCES to underestimate the capacity that is presently or will be available in TLR-III

(Phases 8 and 9 and TLR Phase IV) . The discussion of section 1.3 and the Tables of the Aries Engineering report considers the availability of these existing facilities, even though the expansions are either in the permitting process or are available capacity for permitted expansion in the future.

The DES Draft Solid Waste Plan: In its Draft Solid Waste Plan, the DES seems to credit the tremendous imposition that private landfills have on host communities. It also expresses the DES' goal to report on the benefits of publicly-owned solid waste disposal facilities, and encourage municipalities to form relationships to develop public capacity, thereby eliminating the requirement to accept out-of-state wastes. Another part of this strategy should be to vigorously apply source reduction and recycling/reuse requirements which can reduce the solid waste stream from both within and without New Hampshire, thereby extending the life of existing facilities and maximizing the life of new capacity in places like the now pending expansion of the TLR facility and the potential expansion of the Mount Carberry facility. The public ownership of that facility should also be encouraged, as the DES Draft Solid Waste Plan seems to provide. NCES's public benefit statement ignores both these realities and alternatives.

The NCES plan assumes no source reduction and in one analysis only a gradual waste diversion over the next 10 years, with minor gain of recycling/reuse (except some possible progress toward the legislature's now lapsed goal of 40% waste diversion). More should be required before the Town of Bethlehem is suffers further traffic, odor, air emissions and possible water pollution from an expanded NCES site. They have done their share. Given past impositions, you have now heard from local communities under the provisions of RSA 149-M:11, IV (a). Considering this testimony, you must seriously consider the unified opposition of Bethlehem and surrounding communities to this proposed expansion.

The Gap in Source Reduction, Recycling/Reuse/Incineration: RSA 149-M:3 established a hierarchy of solid waste management methods. RSA 149-M:2 specifies that the goal was to achieve a "40 percent minimum weight diversion in the solid waste stream on a per capita basis". This was supposed to occur on or before the year 2000. This goal has not been attained. NCES has not adequately adjusted its capacity analysis with this goal in mind, to the extent that NCES assumes no source reduction and in one analysis that only a moderate improvement over current waste diversion would occur over the next 10 years. In one analysis NCES assumes the attainment of the now lapsed legislative goal a minimum of 40% diversion in the solid waste stream to occur only 20 years hence. Certainly, if the Department considers the attainment of these goals to be significant to its decision making, simply adding more landfill capacity to address shortfalls in source reduction or waste diversion does nothing to meet those goals.

Contrary to the assertion in NCES' public benefit statement, RSA 149-M: 2 does express a legislative goal that recycling be encouraged and that there is a preference, or hierarchy for recycling and reuse, as well as composting and waste-to-energy technologies. While the DES has recognized this to an extent in its Draft Solid Waste Plan, NCES gives lip service to the goals, while pressing its landfill as meeting a capacity requirement that does not credit the failed attempts of the past decade to meet legislative goals for source reduction and diversion of the solid waste stream.

The Dormant Commerce Clause:

NCES asserts that the dormant Commerce Clause of the United States Constitution requires that the state plan extra capacity for out-of-state waste. While it is true that out-of-state waste may not be excluded from New Hampshire's commercial landfills, it is equally clear that there is a distinction where the state is using its claimed power of preemption to site a landfill for accepting New Hampshire's wastes. I am not here arguing the extent of the state's preemptive power, since this is an issue pending before the Superior Court. What I am saying is that the state should proceed cautiously, since even if the Court accords broad preemptive effect to RSA 149-M, this preemptive effect may not extend to the siting of facilities for commercial acceptance of out-of-state waste. This is an issue that should be reviewed by the Attorney General. I submit that the DES' authority to preemptively site a commercial facility is limited to the purposes expressed in RSA 149-M. That is, capacity to accept New Hampshire's solid waste stream. I do not contend, however, that DES' authority to regulate commercial facilities is so limited and I make the distinction between regulation and preemption in this regard.

In addition, DES can link its permitting decisions to aggressive source reduction efforts, including recycling/reuse/waste to energy source reduction strategies, which can apply equally to in-state and out-of-state sources without violating the dormant Commerce Clause.

I hope that these comments will help you in evaluating whether or not there is a public benefit to be obtained by the granting of the NCES permit application, especially in view of the capacity analysis submitted contemporaneously with this letter by Aries Engineering, Inc.

Sincerely,

Edmund J. Boutin

EJB/alm

Enclosure: Aries Engineering, Inc.'s Report

cc: Bryan Gould, Esquire, Bethlehem Board of Selectmen



November 5, 2002

File 2002-015

Ed Boutin, Esquire
Boutin & Associates, P.L.L.C.
One Buttrick, Road, P.O. Box 1107
Londonderry, New Hampshire 03053

Re: NCES IV March 2002 Public Benefit Statement Analysis
Bethlehem Landfill
Londonderry, New Hampshire

Dear Ed:

As you requested, Aries Engineering, Inc. (Aries) evaluated North Country Environmental Services (NCES) proposed Stage IV landfill expansion permit application public benefit statement (public benefit statement). The purpose of Aries' evaluation was to provide Boutin & Associates (Boutin) with comments on the public benefit statement.

Following is a summary of our public benefit statement analysis.

PUBLIC BENEFIT CRITERIA

New Hampshire public benefit law Section 149-M:11 requires, in part, that the Department of Environmental Services (DES) determine whether a proposed solid waste facility provides a substantial public benefit based on the following general criteria:

- Short- and long-term need for a solid waste facility of the proposed type, size, and location to provide capacity to accommodate solid waste generated within the border of New Hampshire, with the capacity determined by the DES
- The ability of the facility to assist New Hampshire in achieving the hierarchy and goals under Revised Statutes Annotated (RSA) 149-M:2 and RSA 149-M:3 which require, in general, achieving a **minimum** 40 per cent (%) weight diversion in the solid waste stream, and achieving a solid waste management hierarchy as follows:
 1. Source Reduction
 2. Recycling and reuse
 3. Composting
 4. Waste-to-Energy technologies (including incineration)
 5. Incineration, without resource recovery
 6. Landfilling

- The ability of the facility to achieve the goals of the State Solid Waste Management Plan, or one or more solid waste management plans submitted to and approved by the DES

Aries' following comments are based on our analysis of the public benefit statement in light of these criteria.

COMMENTS

1.0 - Short-and Long-Term Capacity

1.1 - Short-Term Capacity

If the DES determines that there is a shortfall in the capacity of existing facilities to accommodate the type of waste to be received at the proposed facility, then the DES deems there is a capacity need for the facility to the extent that the facility satisfies that need. The NCES IV permit application indicates on page 8 that the proposed facility would operate from 2005 for approximately 9 years to 11 years which would mean that the facility would operate until 2014 or 2016. The DES Planning and Community Assistance Section (PCAS) "Snapshot of Solid Waste Management in NH-2002" indicated that there is adequate capacity until 2011. DES representatives have indicated that the adequate capacity will be revised to extend to at least 2012. This indicates that there is no short-term capacity need that NCES IV would satisfy for waste generated within the border of New Hampshire required by the first public benefit criterion for at least the first seven years of proposed facility operation. This should be considered in view of the discussion of existing but not yet permitted capacity that follows.

1.2 - Long-term Capacity

The public benefit statement indicates there will be a projected short fall of capacity within the 20-year period following the proposed Stage IV operational date of 2005. NCES's analysis was based on very conservative assumptions that do not appear to realistically reflect current conditions. For example, NCES assumes that two New Hampshire Waste-to-Energy incinerators would not provide waste management capacity over the full 20-year analysis period, that the status of Mount Carberry landfill was questionable, that New Hampshire would continue to generate solid waste at a per capita rate of 6.4 pounds per person per day, and that there would be no permitted capacity beyond TLR-III which would reach capacity in 2010.

Updated information available several months after NCES's March 2002 public benefit statement indicated that the Concord, New Hampshire waste-to-energy facility is expanding capacity, and based on recent discussions with DES representatives there appears to be

no technical reasons why the Concord and Claremont waste-to-energy facilities cannot continue to operate for a long-term period of 20 years or more.

Further, based on discussions with DES representatives New Hampshire's per capita solid waste generation rate is approximately 6.0 pounds or less per person per day which would result in solid waste generation rates substantially less (about 6%) than that projected by NCES at 6.4 pounds per person per day. This would significantly decrease if further waste reduction contemplated by the statute was aggressively pursued.

The NCES analysis also did not consider the substantial additional capacity of TLR-III, Phase 8 and the substantial additional TLR landfill footprint capacity beyond TLR-III including TLR-III, Phase 9 and the remaining capacity of TLR-II, Phase 7. DES representatives have indicated that the TLR permitted footprint can accommodate additional substantial expansion which would allow the facility to operate at a sustained capacity of approximately 950,000 tons per year for the 20-year period evaluated in NCES's permit application, which would indicate a substantial permitted capacity not considered by NCES in their analysis. In this regard, the DES is evaluating a new and substantial TLR-IV expansion proposal.

NCES's analysis did not consider the current status of the Mount Carberry landfill which appears to be a viable operation that can continue to serve the needs of the Androscoggin Solid Waste District, the potential future landfill owner. Further, discussions with DES representatives indicate that the landfill could operate for an extended period since the facility has the capacity to approximately double the current Landfilling area. This additional capacity was not accounted for in NCES's analysis.

Using reasonably conservative assumptions and more current information, Aries prepared the attached Table 1 "Permitted and Potential Disposal Capacity Available for New Hampshire Waste" and Table 2 "Projected Population and Waste Generation in New Hampshire" that summarize our analysis of New Hampshire's long-term waste generation rates and solid waste management capacity. For comparison purposes, we included NCES's substantially more conservative analysis and assumptions. NCES's and Aries' assumptions and information are summarized in the table notes and reflect the previous discussion. An analysis of the net waste management capacity results indicates that while NCES's analysis indicates a waste management capacity shortfall of from approximately 13,905,225 tons to 18,487,692 tons, Aries' analysis indicates that there will likely be an excess waste management capacity of from approximately 222,111 tons to 2,058,617 tons. While it is clear that the DES makes the final determination of waste management capacity, the more current information and data evaluated by Aries indicates that there will likely be long-term excess solid waste management capacity.

Based on our analysis of New Hampshire's short-term and long-term waste management needs, it appears that the public benefit statement does not demonstrate a public need.

1.3 - Regional Capacity

Although not explicitly referred to in the law as a requirement to demonstrate public need, NCES presented an analysis of how NCES IV addresses regional capacity needs. Assuming that the public benefit law allows or requires a regional analysis, it appears that NCES's regional analysis was very conservative did not consider more current information.

For example, NCES analysis included a selected list of North Country towns that would be served by the facility expansion. The list of towns includes some municipalities that are closer to waste management facilities in the southern part of the state and some towns that are approximately equidistant from Bethlehem and southern-New Hampshire facilities. For example, the list of North Country towns closer to southern New Hampshire facilities included Alton, Brookfield, Effingham, Middleton, New Durham, and Wolfeboro which are as close as 12 miles to Rochester, New Hampshire. The list also included towns such as Alexandria, Bridgewater, Center Harbor, Danbury, Freedom, Groton, Madison, Moultonborough, Ossipee, Plymouth, Sanbornton, Springfield, Tamworth, Tuftonboro, and Wilmot, which are approximately equidistant from Bethlehem and Rochester. These communities could more easily use southern state facilities for disposal. Correcting the list of towns in the North Country using reasonable assumptions would substantially reduce the amount of solid waste generated by these communities by approximately 47,000 ton of solid and special waste.

Also, considering the continued viability and potential expansion of the Mount Carberry landfill it seems likely that there will continue to be substantial long-term North Country landfilling resources.

NCES's public benefit statement on page 7 referred to the difficulty transporting solid waste from North Country towns to southern New Hampshire. However, discussions with DES representatives indicated that solid waste transportation costs are approximately 10% of disposal costs. This would be based on a recent estimate of transportation costs of approximately \$1.50 per mile for a 22-ton solid waste load. Actual transportation rates would depend on the selected facility, waste source and final contractual arrangements. For a transportation distance of 100 miles, the additional expense to transport waste would be about \$7 per ton which would be about 10% of a \$70 tipping fee. This would indicate only a marginal increase in solid waste disposal costs and would make transportation cost-effective.

This observation is consistent with the waste source for at least some municipal solid waste (MSW) and construction and demolition waste (C&D) disposed of at the NCES Bethlehem facility. NCES indicated on page 28 of the public benefit statement that the following southern New Hampshire towns disposed of MSW or C&D waste at NCES: Salem, Milford, Laconia, Hopkinton, Candia, Franklin, Bennington, Bedford, and Allenstown. The Town of Salem is actually farther from Bethlehem than the Town of Errol is from Rochester. Since these southern New Hampshire towns which are located as far

as 123 miles from Bethlehem apparently found it reasonable and cost-effective to dispose of waste in a North Country facility, it likewise is reasonable to conclude that some North Country towns would also find it reasonable and cost-effective to dispose of some waste in southern New Hampshire facilities.

2.0 - Assist New Hampshire in Achieving Hierarchy and Goals

2.1 - Hierarchy

The NCES public benefit statement appears to provide only the last element of New Hampshire's hierarchy of waste management goals; landfilling. As such it does not appear to provide additional means such as additional source reduction, recycling, reuse, composting, waste-to-energy incineration, or incineration without waste-to-energy recovery to achieve the preferred hierarchy of waste management. The public benefit statement alludes to a proposed composting effort, but based on recent discussions with DES representatives it appears that the composting effort is not in place at the facility. Further, it is not clear that there is any connection between increasing additional landfilling capacity and encouraging, or expanding the preferred hierarchy waste management techniques at the site. It therefore does not appear that the public benefit statement demonstrates explicit ways that the facility assists the state in implementing the solid waste management hierarchy.

2.2 - Goals

The NCES IV application is for a landfill, and as such does not provide for a direct way to meet the 40% diversion goal. As a landfill, it is likely that the expanded landfilling capacity would make it more difficult to meet the minimum 40% diversion goal since excess disposal capacity would likely keep down disposal costs and make it more cost-effective and convenient to landfill waste rather than taking affirmative steps to reduce the solid waste stream. As such, it appears that the additional landfilling capacity does nothing to increase diversion of the solid waste stream and therefore does not assist the state in achieving the solid waste diversion goal of a minimum 40%.

3.0 - Solid Waste Management Plan Goals

The DES September 2002 Draft Solid Waste Management Plan (Plan) lists the following five goals:

- Goal 1- Reduce the solid waste stream volume
- Goal 2- Reduce the toxicity of the solid waste stream
- Goal 3- Maximize the diversion of solid waste
- Goal 4- Assure New Hampshire disposal capacity
- Goal 5- Assure that solid waste management protects human health and the environment

Bethlehem Landfill - NCES IV March 2002 Public Benefit Statement Analysis - November 2002

Of these five goals, it is not clear how the proposed NCES IV additional solid waste disposal capacity will assist New Hampshire in achieving all of the explicit goals. For example, the application does not indicate that landfilling will reduce the solid waste stream volume or toxicity, does nothing to maximize the diversion of solid waste, and is not apparently needed to assure New Hampshire short-term or long-term capacity needs. Presumably the last goal, assuring that solid waste management protects human health and the environment, would be met by the permit technical analysis performed by DES professionals, and by vigilant and conscientious operations by the facility operator backed by thorough operational inspections by DES professionals.

Since the proposal does not appear to meet all or even most of the Plan goals, it does not appear to assist the state of New Hampshire in achieving the solid waste goals.

SUMMARY

Based on the prior comments and discussion, it is Aries' opinion that the proposed NCES IV solid waste facility public benefit statement does not clearly demonstrate a public benefit as required by the public benefit criteria. This analysis is based on the information sources referred to in the text. If additional information not available for our analysis becomes available, Aries may need to revise our opinion based on an additional information analysis.

Sincerely
Aries Engineering, Inc.

COPY

Thomas E. Roy, P.E., P.G.
Principal Engineer/Geologist

TER:cgf

Attachments: Table 1 - Permitted and Potential Disposal Capacity Available for New
 Hampshire Waste (Tons)
 Table 2 - Project Population and Waste Generation in New Hampshire

cc: Mike Guilfooy, New Hampshire Department of Environmental Services
 Bryan Gould, Esquire, Brown, Olson & Wilson, P.C.
 Lon Weston, Town of Bethlehem

TABLE 1

11/5/02

PERMITTED AND POTENTIAL DISPOSAL CAPACITY AVAILABLE FOR NEW HAMPSHIRE WASTE (TONS)
YEARS 2005 THROUGH 2024
 Belknap County
 Londonderry, New Hampshire

20-Year Disposal Capacity Estimates	Turkey	Lined Landfills			Waste-to-Energy		C&D Processing		Potential 20-Year Disposal Capacity	Projected 20-Year Waste Generation (25% to 40% Diversion)	Waste Disposal 25% to 40% Diversion Capacity Surplus/(Shortfall)		Projected 20-Year Waste Generation (40% Diversion)	Waste Disposal 40% Diversion Capacity Surplus/(Shortfall)
		Mc Carberry	Washburn	Conway	Libanon	Cheyenne	Concord	LL&S	TRACO	Tumkey				
NCES Estimate 1	4,680,000	214,500	1,350,000	200,000	960,000	46,750	2,129,200	620,000	974,000	620,000	11,826,450	30,314,142	28,373,225	(16,546,775)
NCES Estimate 2	4,180,000	552,500	1,350,000	200,000	960,000	374,000	2,737,500	620,000	974,000	2,000,000	14,498,000	30,314,142	28,373,225	(13,905,225)
Aves Estimate	17,570,000	650,000	1,350,000	200,000	960,000	374,000	4,187,500	620,000	974,000	2,000,000	28,905,500	28,683,389	26,846,883	2,058,617

NOTES:

- The NCES Estimate 1 assumes:
 - Tumkey will accept tonnage at a reduced rate until 11 R.III reaches capacity in 2010.
 - Mc Carberry accepts 14,500 tons per year (TPY) until 2021.
 - Rashua accepts 80,000 TPY until 2021.
 - Conway accepts 10,000 TPY for 20 years.
 - Chatham accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 25 yrs until 2027.
 - Concord accepts 182,500 TPY for 5 years followed by 121,540 TPY adjusted for ash disposal for 10 years until 2010.
 - Tumkey accepts 120,000 TPY of C&D waste until closure in 2010.
- The NCES Estimate 2 assumes:
 - Tumkey will accept tonnage at a reduced rate until TLR III reaches capacity in 2010.
 - Mc Carberry accepts the permitted 32,500 TPY until 2021.
 - Rashua accepts 80,000 TPY until 2021.
 - Conway accepts 10,000 TPY for 20 years.
 - Chatham accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 20 yrs.
 - Concord accepts 182,500 TPY for 15 years when the electricity sales contract expires in 2010 and the cooperative provides ash disposal.
 - Tumkey accepts 100,000 TPY of C&D waste for 20 years.
- The Aves estimate assumes:
 - Tumkey will accept 6,170,000 tons for 2005 through 2012. Approval capacity for subsequent years will be subutilized in the uplink of 2003 and will likely indicate a fill rate of up to 1,200,000 TPY. For this analysis a more conservative fill rate of 810,000 TPY was specified for 2013 through 2024 for a subtotal of 1,400,000 tons and a 20-year total of 17,570,000 tons.
 - Mc Carberry accepts 14,500 TPY until 2021.
 - Rashua accepts 80,000 TPY until 2021.
 - Conway accepts 10,000 TPY for 20 years.
 - Chatham accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 20 yrs.
 - Concord accepts 676 tons per day (200,876 TPY) at their proposed increased rate for 20 years and the cooperative provides ash disposal.
 - Tumkey accepts 100,000 TPY of C&D waste for 20 years.
- All waste information was derived in part from descriptions with NCES representatives.
- Information was derived from NCES's March 2002 Public Benefit Statement.

TABLE 2

11/5/02

PROJECTED POPULATION AND WASTE GENERATION IN NEW HAMPSHIRE
YEARS 2005 THROUGH 2024
Bethlehem Landfill
Londonderry, New Hampshire

Years	Sum of Projected Population	Projected MSW Generation (tons)	Projected C&D Generation (tons)	Quantity Before Diversion (tons)	26% to 40% Diversion (tons)	40% Diversion (tons)	Special Waste (tons)	Disposal Requirement 26% to 40% Diversion (tons)	Disposal Requirement 40% Diversion (tons)
2005-2009	6,698,430	7,334,781	1,266,003	8,600,784	2,236,204	3,440,314	1,032,004	7,396,674	6,192,565
2010-2014	7,036,005	7,704,425	1,329,805	9,034,230	2,361,296	3,613,692	1,084,108	7,137,042	6,504,646
2014-2019	7,458,813	8,167,400	1,409,716	9,577,116	3,830,846	3,830,846	1,149,254	6,895,623	6,895,523
2020-2024	7,846,735	8,592,175	1,483,033	10,075,208	4,030,083	4,030,083	1,209,025	7,254,150	7,254,150
Total									26,846,883

NOTES:

1. The population projections were provided by the NH Office of State Planning.
2. The projected municipal solid waste (MSW) generation is based on updated data provided by the NHDES WMD Planning and Community Assistance Section (PCAS) which indicates a per capita waste generation rate of 5.0 lb/person/day.
3. The projected quantities of construction & demolition (C&D) debris were estimated based on the 2000 generation rate of 0.189 tons per person per year provided by the PCAS.
4. PCAS data indicates special waste quantities are generally equivalent to 12% of the total MSW and C&D quantities generated.
5. The escalating diversion rate assumes 26% for 2005-2009, 33% for 2010-2014, and 40% for 2014-2024.
6. Information was also derived from NCEC's March 2002 Public Benefit Statement.

Brenda

From: Tom Roy [tomroy@aries-eng.com]
Sent: Thursday, November 07, 2002 11:31 AM
To: Mike Guilfooy (E-mail)
Cc: Brenda Keith (E-mail); Ed Boutin (E-mail)
Subject: NCES IV application comments



2002-015

NCESwcdsposalcorrect... Good morning Mike:

I noticed a typographical error in the comment Table 1 notes that I sent to you . Table 1 note 3 b. should read " Mt Carberry accepts 32,500 TPY for 20 years.".

The corrected Table 1 is attached for your files. The numbers reflected in the table do not change.

Regards.

Tom

Thomas Roy, P.E., P.G., L.S.P.
Principal Engineer/Geologist
Aries Engineering, Inc.
46 South Main Street
Concord, New Hampshire 03301
603-228-0008, Fax 603-226-0374
E-Mail: TomRoy@Aries-Eng.com
Web Site: www.Aries-Eng.com

TABLE 1

11/1/02

**PERMITTED AND POTENTIAL DISPOSAL CAPACITY AVAILABLE FOR NEW HAMPSHIRE WASTE (TONS)
YEARS 2005 THROUGH 2024
Bathlehem Landfill
Londonderry, New Hampshire**

20-year Disposal Capacity Estimates	Lined Landfills				Waste-to-Energy		C&D Processing		Potential 20-Year Disposal Capacity	Projected 20-Year Waste Generation (25% to 40% Diversion)	Waste Disposal 25% to 40% Diversion (Capacity Surplus/Shortfall)	Projected 20-Year Waste Generation (40% Diversion)	Waste Disposal 40% Diversion (Capacity Surplus/Shortfall)
	Turnkey	Alt. Canterbury	Nashua	Convey	Valanon	Clarendon	Cuykend	LL&S	ERRCO	Turnkey			
NICES Estimate 1	4,690,000	246,500	1,360,000	200,000	960,000	46,750	2,129,200	620,000	974,000	600,000	11,828,450	30,314,142	(18,487,692)
NICES Estimate 2	4,690,000	\$62,500	1,360,000	200,000	960,000	374,000	2,737,500	620,000	974,000	7,000,000	14,460,000	30,314,142	(16,846,142)
Aries' Estimate	17,670,000	650,000	1,360,000	200,000	960,000	374,000	4,187,500	620,000	974,000	2,000,000	28,905,600	28,663,389	222,111

NOTES:

- The NICES Estimate 1 assumes:
 - Turnkey will accept tonnage at a reduced rate until TLR III reaches capacity in 2010.
 - Alt. Canterbury accepts 14,500 tons per year (TPY) until 2021.
 - Nashua accepts 600,000 TPY until 2021.
 - Convey accepts 10,000 TPY for 20 years.
 - Clarendon accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 2.5 yrs until 707.
 - Concord accepts 182,500 TPY for 5 years followed by 121,545 TPY adjusted for ash disposal for 10 years until 2019.
 - Turnkey accepts 120,000 TPY of C&D waste until closure in 2010.
- The NICES Estimate 2 assumes:
 - Turnkey will accept tonnage at a reduced rate until TLR III reaches capacity in 2010.
 - Alt. Canterbury accepts the permitted 32,500 TPY until 2021.
 - Nashua accepts 60,000 TPY until 2021.
 - Convey accepts 10,000 TPY for 20 years.
 - Clarendon accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 20 yrs.
 - Concord accepts 182,500 TPY for 15 years when the electricity sales contract expires in 2019 and the cooperative provides ash disposal.
 - Turnkey accepts 100,000 TPY of C&D waste for 20 years.
- The Aries estimate assumes:
 - Turnkey will accept 6,170,000 tons for 2005 through 2012. Disposal capacity for subsequent years will be submitted in the spring of 2003 and will likely indicate a fill rate of up to 1,200,000 TPY. For this analysis a more conservative fill rate of 950,000 TPY was selected for 2013 through 2024 for a subtotal of 11,400,000 tons and a 20-year total of 17,670,000 tons.
 - Alt. Canterbury accepts 32,500 TPY for 20 years.
 - Nashua accepts 60,000 TPY until 2021.
 - Convey accepts 10,000 TPY for 20 years.
 - Clarendon accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 20 yrs.
 - Concord accepts 675 tons per day (209,875 TPY) at their permitted increased rate for 20 years and the cooperative provides ash disposal.
 - Turnkey accepts 100,000 TPY of C&D waste for 20 years.
 - Aries' information was derived in part from discussions with DES representatives.
 - Information was derived from NICES March 2002 Public Benefit Statement.



ARIES ENGINEERING, INC.

Environmental Engineers and Hydrogeologists

46 South Main Street, Concord, NH 03301 : Phone: 603-228-0908 Fax: 603-226-0374 : www.aries-eng.com

EQB/BER

Town of Bethlehem

Docket #

Exhibit H 03-05 WMC

December 10, 2002
File No. 2002-015

Mr. Michael Guilfoyle, P.E.
NH Department of Environmental Services
Waste Management Division
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Re: Corrected Comments
Public Benefit Statement
Stage IV Standard Permit Application
North Country Environmental Services, Inc.
Bethlehem, New Hampshire

Dear Mr. Guilfoyle:

On November 5, 2002 Aries Engineering, Inc. (Aries) submitted comments regarding North County Services, Inc. (NCES) Stage IV standard permit application for their proposed landfill expansion in Bethlehem, New Hampshire. The comments were prepared at the request of Town of Bethlehem representatives. Based on additional information received by Aries after submitting our comments, Aries wishes to provide the following comment corrections.

Permitted and Potential Disposal Capacity:

Aries understands that the Turnkey Landfill Rochester (TLR) permitted landfill footprint can accommodate additional expansion at an annual rate of 740,000 tons per year for an additional two years within the twenty-year period from 2005 through 2024 evaluated by NCES. Aries understands that an additional TLR expansion proposal, previously referred to as TLR-III, Phase 9 and TLR-IV, will likely be submitted to the New Hampshire Department of Environmental Services (NHDES) in early 2003 as a standard permit application. The TLR expansion proposal would substantially increase New Hampshire's potential disposal capacity and if permitted would likely allow the TLR facility to operate for an additional ten years beyond 2012 at a sustained capacity of approximately 950,000 tons per year. These corrections are reflected in our attached

NCES – Corrected Comments, Public Benefit Statement – December 2002

revised Table 1 –“Permitted and Potential Disposal Capacity Available for New Hampshire Waste (Tons)” and clarify that the TLR expansion is not a current permitted disposal capacity, but would be a proposed disposal capacity that may soon be permitted.

Our corrections do not change our previous observation that there will not likely be any shortfall in capacity at permitted facilities for the first eight years of the nine- to eleven-year life of the proposed NCES Stage IV landfill expansion (from 2005 through 2012). It appears that the NHDES has also concluded that there is adequate capacity through 2012. During this initial eight-year operational period, the NCES Stage IV expansion would likely represent an excess disposal capacity for waste generated within the borders of New Hampshire rather than a capacity need to address a disposal capacity shortfall.

While we recognize that the NHDES must consider permitted disposal capacity in the public benefit analysis, we encourage your office to reflect on whether the proposed disposal capacity likely available after 2012 will be adequate to cover any shortfall in permitted capacity for the final one to three years of the NCES Stage IV landfill expansion nine-year to eleven-year operational lifespan. It appears that TLR's large disposal capacity application will shortly be submitted to the NHDES and if approved, would substantially add to New Hampshire's capacity to adequately receive waste generated within the borders of New Hampshire.

DES Capacity Analysis:

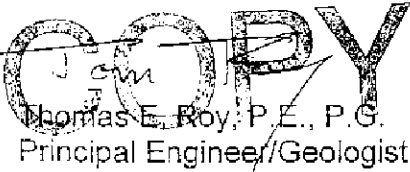
Aries understands that NHDES will perform a capacity analysis that will consider the twenty-year period following the date that NHDES reaches a position on NCES's application. Aries understands that the NHDES should reach a permit application decision on or before January 2003. Since the NHDES will likely consider a twenty-year period from 2003 through 2022, which is different from the twenty-year period of 2005 through 2024 considered by NCES, Aries revised our analysis accordingly to coincide with this period, which is summarized in the attached revised Table 1-“ Permitted and Potential Disposal Capacity Available for New Hampshire Waste (Tons)”. Our attached Table 2- “Projected Population and Waste Generation In New Hampshire” was also revised to reflect this twenty-year period with the assumption that the waste mass generated in the revised period will be less than or equal to the waste mass generated in the NCES period. For our analysis, we adopted the conservative position that the waste mass generated will be the same for both periods.

These revisions do not change our opinions that there will likely be substantial disposal capacity available for waste generated within the borders of New Hampshire and that NCES's public benefit statement has not clearly demonstrated a public benefit by satisfying the required public benefit criteria specified in RSA 149-M: 11. As we previously indicated, these opinions may require revision should we receive additional information that was not available for our current analysis.

NCES – Corrected Comments, Public Benefit Statement – December 2002

I can be reached at (603) 228-0008 should you have any questions.

Sincerely,
Aries Engineering, Inc.


Thomas E. Roy, P.E., P.G.
Principal Engineer/Geologist

TER:cgf

Attachments: Table 1 – Permitted and Potential Disposal Capacity Available for New
Hampshire Waste (Tons)
Table 2 – Projected Population and Waste Generation in New Hampshire

cc: Ed Boutin, Esquire, Boutin & Associates
Lon Weston, Town of Bethlehem
Bryan Gould, Esquire, Brown, Olson & Wilson

✓ C/L Bethlehem

TABLE 1
PERMITTED AND POTENTIAL DISPOSAL CAPACITY AVAILABLE FOR NEW HAMPSHIRE WASTE (TONS)
YEARS 2003 THROUGH 2024 and
2003 THROUGH 2022
NCES Landfill
Bolton New Hampshire
Revised 12/10/02

20-Year Disposal Capacity Estimates (2003 through 2024)	Landfills					Waste to Energy		C&D Processing			Potential 20-Year Disposal Capacity	Projected 20-Year Waste Generation (0% to 40% Diversion)	Waste Disposal 20% to 40% Diversion Capacity Surplus(Shortfall)	Projected 20-Year Waste Generation (40% Diversion)	Waste Disposal 40% Diversion Capacity Surplus(Shortfall)
	Turkey	ML Carberry	Nashua	Conway	Lebanon	Clarendon	Concord	IL&S	ERRCO	Turkey					
NCES Estimate 1 (2003 through 2024)	4,600,000	246,500	1,300,000	200,000	800,000	48,750	2,129,200	620,000	974,000	600,000	11,826,450	30,314,142	(18,487,692)	28,373,225	(18,545,775)
NCES Estimate 2 (2003 through 2024)	4,600,000	552,500	1,300,000	200,000	900,000	374,000	2,737,500	620,000	974,000	2,000,000	14,468,000	30,314,142	(15,846,142)	28,373,225	(13,905,225)
Aries Estimate (2003 through 2022)	17,420,000	650,000	1,300,000	200,000	900,000	374,000	4,197,500	620,000	974,000	2,000,000	28,755,500	28,683,368	72,111	26,846,853	1,908,617

NOTES:

- The NCES Estimate 1 assumes:
 - Turkey will accept tonnage at a reduced rate until TLR III reaches capacity in 2010.
 - ML Carberry accepts 14,500 tons per year (TPY) until 2021.
 - Nashua accepts 80,000 TPY until 2021.
 - Conway accepts 10,000 TPY for 20 years.
 - Clarendon accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 2.5 yrs until 2010.
 - Concord accepts 182,500 TPY for 5 years followed by 121,545 TPY adjusted for ash disposal for 10 years until 2010.
 - Turkey accepts 120,000 TPY of C&D waste until closure in 2010.
 - The twenty-year period analyzed is from 2003 through 2024.
- The NCES Estimate 2 assumes:
 - Turkey will accept tonnage at a reduced rate until TLR III reaches capacity in 2010.
 - ML Carberry accepts the permitted 32,500 TPY until 2021.
 - Nashua accepts 80,000 TPY until 2021.
 - Conway accepts 10,000 TPY for 20 years.
 - Clarendon accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 2.5 yrs.
 - Concord accepts 5/5 tons per day (208,575 TPY) at their proposed increased rate for 20 years and the cooperative provides ash disposal.
 - Turkey accepts 100,000 TPY of C&D waste for 20 years.
 - The twenty-year period analyzed is from 2003 through 2024.
- The Aries estimate assumes:
 - Turkey will accept 7,920,000 tons for 2003 through 2024. A potential disposal capacity application for subsequent years will likely be submitted in the spring of 2003 and will likely indicate a fill rate of up to 1,200,000 TPY. For this analysis a more conservative fill rate of 800,000 TPY was selected for 2013 through 2022 (10 years) for a subtotal of 9,500,000 tons and a 20-year total TLR capacity of 17,420,000 tons.
 - ML Carberry accepts 32,500 TPY for 20 years.
 - Nashua accepts 80,000 TPY until 2021.
 - Conway accepts 10,000 TPY for 20 years.
 - Clarendon accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 2.5 yrs.
 - Concord accepts 5/5 tons per day (208,575 TPY) at their proposed increased rate for 20 years and the cooperative provides ash disposal.
 - Turkey accepts 100,000 TPY of C&D waste for 20 years.
 - Aries' information was derived in part from discussions with DES representatives.
 - The twenty-year period analyzed is from 2003 through 2022.
 - The waste generated for the period 2003 through 2022 is assumed to be equal to the waste generated for 2003 through 2024. It is recognized that the actual mass of waste generated for the period of 2003 through 2002 will likely be less than the mass generated from 2003 through 2024.
 - Information was derived from NCES's March 2002 Public Benefit Statement and discussions with NH/DES representatives.
 - C&D includes construction and demolition debris.

TABLE 2

PROJECTED POPULATION AND WASTE GENERATION IN NEW HAMPSHIRE
YEARS 2005 THROUGH 2024 and
2003 THROUGH 2022 (in parentheses)
 NCES Landfill
 Bethlehem, New Hampshire
 Revised 12/16/02

Years	Sum of Projected Population	Projected MSW Generation (tons)	Projected C&D Generation (tons)	Quantity Before Diversion (tons)	26% to 40% Diversion (tons)	40% Diversion (tons)	Special Waste (tons)	Disposal Requirement 26% to 40% Diversion (tons)	Disposal Requirement 40% Diversion (tons)
2005-2009 (2003-2007)	6,698,430	7,334,781	1,266,003	8,600,784	2,236,204	3,440,314	1,032,094	7,366,674	6,192,565
2010-2014 (2008-2012)	7,036,005	7,704,425	1,329,805	9,034,230	2,381,296	3,613,692	1,084,108	7,137,042	6,504,646
2015-2019 (2013-2017)	7,458,813	8,167,400	1,409,716	9,577,116	3,830,846	3,830,846	1,149,254	6,895,523	6,895,523
2020-2024 (2018-2022)	7,846,735	8,592,175	1,463,033	10,075,208	4,030,083	4,030,083	1,209,025	7,254,150	7,254,150
Total									26,946,883

NOTES:

1. The population projections were provided by the NH Office of State Planning.
2. The projected municipal solid waste (MSW) generation is based on updated data provided by the NHDES WMD Planning and Community Assistance Section (PCAS) which indicates a per capita waste generation rate of 6.0 lb/person/day.
3. The projected quantities of construction & demolition (C&D) debris were estimated based on the 2000 generation rate of 0.189 tons per person per year provided by the PCAS.
4. PCAS data indicate special waste quantities are generally equivalent to 12% of the total MSW and C&D quantities generated.
5. The escalating diversion rate assumes 26% for 2005-2009, 33% for 2010-2014, and 40% for 2014-2024.
6. Information was also derived from NCES's March 2002 Public Benefit Statement and discussions with NHDES representatives.
7. It is assumed that the population projections for 2003 through 2022 will be less than or equal to the population projections for 2005 through 2024. The actual years represented in the analysis are shown in parentheses under the tabulated data period.

BROWN, OLSON & WILSON
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
501 SOUTH STREET
CONCORD, NEW HAMPSHIRE 03304

Town of Bethlehem
Docket #
Exhibit I **03-05 WMC**

PETER W. BROWN
ROBERT A. OLSON
WILLIAM H. WILSON, JR.
BRYAN K. GOULD
DAVID K. WIESNER
DAVID J. SHULOCK
PAMELA G. VAN HORN
RICHARD C. MOONEY
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SUSAN W. CHAMBERLIN

TELEPHONE: 603-225-9716
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E-MAIL: bowlaw@bowlaw.com

November 18, 2002

VIA HAND DELIVERY

Michael E. Guilfoyle
N.H. Department of Environmental Services
Waste Management Division
6 Hazen Drive, P.O. Box 95
Concord, NH 03302-0095

Re: March 2002 Public Benefit Statement, Proposed Stage IV
North Country Environmental Services, Inc., Bethlehem, New Hampshire

Mr. Guilfoyle:

This letter is in response to comments filed by Attorney Edmund J. Boutin by letter dated November 5, 2002 (the "Boutin letter") which attached a letter authored by Thomas E. Roy of Aries Engineering, Inc. (the "Aries letter") concerning the Public Benefit Statement filed by North Country Environmental Services, Inc. ("NCES") in April 2002.

I. Capacity at Turnkey Landfill Associated With Yet to be Submitted Applications Is Not Required to be Included in the NCES Public Benefit Capacity Analysis.

At the time NCES filed its Public Benefit Statement for Stage III, DES projected that the Turnkey landfill's permitted capacity would be fully utilized at the end of 2010. In fact, Turnkey's then existing permits limited Turnkey to specified yearly tipping rates that would have assured capacity until 2010. NCES based its calculations on the yearly tipping rates specified in Turnkey's permits. For the six-year period of 2005 through 2010, the average permitted tipping rate was 781,667 TPY.¹ NCES correctly estimated

¹ Turnkey's permits specified tipping rates for the relevant years as 850,000, 800,000, 800,000, 750,000, 750,000 and 740,000.

that the Turnkey facility would provide a (then currently) permitted capacity of approximately 4,690,000 tons during the 20-year planning period.²

The Aries letter makes two assertions regarding the capacity available at Turnkey landfill. First, the Aries letter notes that Turnkey landfill has received approval for an additional 1,480,000 tons of solid waste disposal capacity. These modifications permitted Turnkey to add two years to the expected life of its permitted facility at an average tipping rate of approximately 771,250 TPY during the years 2005 through 2012.³ Aries estimated that the Turnkey facility would provide a (now currently) permitted capacity of approximately 6,170,000 tons during the 20-year planning period. In evaluating the NCES Public Benefit Statement, DES could analyze the Turnkey capacity based on the capacity approved at the time of submission of the NCES application; however, even if the NCES capacity analysis in its Public Benefit Statement is updated for the additional 1,480,000 tons from Turnkey landfill, a capacity shortfall continues to exist and Stage IV provides the necessary public benefit. See the analysis presented in Section IV below.

The second assertion regarding Turnkey landfill capacity made in the Aries letter, however, does not require any adjustment to the NCES capacity analysis because it is based on speculation. The Aries letter at Table 1, note 3(a), seeks to add 11,400,000 tons of Turnkey landfill capacity to the NCES capacity analysis. That same note states that "Disposal capacity for [the years 2003 through 2024] will be *submitted* in the spring of 2003." Thus, an application for this expansion of the permitted footprint of the Turnkey landfill has yet to be submitted to DES. The proposed capacity not only lacks DES construction and operating approval, but does not even have a DES-issued standard, or so-called "foot print" permit. No provision of RSA 149-M:11 permits or requires DES or applicants to include facilities that do not have a standard permit and for which no application has yet been received in their capacity calculations. Inclusion of such facilities would be speculation, not analysis.

² The Boutin letter also criticizes NCES's 20-year capacity projection as "artificially . . . identifying 'permitted facilities' as standard permit facilities with construction and operating approvals" and eliminating from its analysis any facilities that have only standard ("foot print") permits. The Boutin letter claims that NCES therefore underestimated the amount of available capacity during the 20-year planning period. The Boutin letter fails to realize, however, that NCES's capacity projection is not limited to facilities with construction and operating approvals, but is instead based upon capacity implicit in standard permits issued by DES. Consequently, NCES's capacity projection is in accord with DES's methodology and appropriately determines capacity under RSA 149-M:11, V.

³ This average tipping rate is derived from Aries Engineering's assumption that "Turnkey will accept 6,170,000 tons for 2005 through 2012."

II. Mt. Carberry Potential Expansion Capacity Can Not Be Counted In The NCES Public Benefit Capacity Analysis Because Mt. Carberry Has Not Undergone Its Own Public Benefit Analysis For The So-Called Expansion Capacity.

The Boutin and Aries letters attempt to argue that the capacity represented by the potential expansion of the Mt. Carberry landfill should be included in NCES's public benefit analysis of available capacity.⁴ This argument fails because it ignores the fact that the Mt. Carberry facility, as proposed for ownership by the Androscoggin Valley Regional Refuse Disposal District ("AVRRDD") must undergo its own public benefit analysis and analysis of economic viability as required by RSA 149-M:11 before it can legally increase the amount of waste disposed of in that facility.

At present, the Mt. Carberry facility is privately owned and its DES issued permits authorizing levels of waste disposal are premised on that private ownership, and restrict the disposal of municipal solid waste to 32,500 tons annually. Of this 32,500 tons, about 12,000 tons represents solid waste originating within the AVRRDD. Newspaper reports indicate that the AVRRDD seeks to acquire ownership of the facility and, having entered a letter of intent with the current owner, hopes to close on the acquisition of the Mt. Carberry landfill by December 31, 2002. Once the facility is owned by the AVRRDD, a solid waste district, facility operation must conform to the requirements of RSA 149-M, including RSA 149-M:11. These statutory requirements will require transfer of the permit to the AVRRDD and permit modifications for the facility ownership and operation. Additionally, state law will preclude the disposal of out-of-district solid waste at Mt. Carberry, unless the facility successfully undergoes public benefit analysis and economic viability analysis in accordance with RSA 149-M:11. Absent such approval, the AVRRDD will be restricted by law to the disposal in the Mt. Carberry landfill of its 12,000 tons annually and the Fraser Paper Berlin mill tonnage.

1. Public Benefit Analysis is Required for the AVRRDD to Accept Out-of-District Waste

Under RSA 149-M:11, VII district-owned facilities are exempt from the statutory requirement to demonstrate a need for the facility to accommodate solid waste

⁴ The Boutin letter and the Aries letter respectively state that: (1) "NCES's interpretation [of RSA 149-M:11, V] does not adequately consider existing facilities which have expansion capacity and have not yet been specifically permitted." Boutin at 1; (2) The NCES's public benefit statement ignores extending the life of existing facilities and the potential expansion of the Mt. Carberry facility. Boutin at 2; (3) The "NCES's analysis did not consider the current status of the Mt. Carberry landfill which appears to be a viable operation..." and "...the landfill could operate for an extended period since the facility has the capacity to approximately double the current landfilling area. This additional capacity was not accounted for in NCES's analysis." Aries at 2; and (4) "Also considering the continued viability and potential expansion of the Mt. Carberry landfill it seems likely that there will continue to be substantial long-term North Country landfilling resources." Aries at 4.

generated within the state, but only if the district-owned facility restricts itself to receiving waste from within the district.

The AVRRDD, however, is not exempt from this requirement because it has publicly stated that it will not, and cannot, rely solely on waste from within the district to balance its Mt. Carberry landfill budget. In fact, the AVRRDD must rely on the regular acquisition of significant amounts of out-of-district waste; otherwise, it may not be a financially viable operation.

Attached, as Exhibit 1, is a two-page document from the AVRRDD captioned "2003 Proposed Mt. Carberry Landfill Budget."⁵ This budget demonstrates that the AVRRDD, in addition to the 3,000 tons of waste presently originating from non-district towns, will need to import a range of between 27,840 tons to 41,758 tons of out-of-district waste (depending on price) to balance its landfill budget. Absent importation of this waste, on average per year for each of the first five years, the AVRRDD will have an annual budget shortfall of one million, six hundred seventy thousand, three hundred and thirty three thousand dollars (\$1,670,333).

The AVRRDD need for out-of-district waste does not stop at budget year five. The 2003 proposed budget states that for years six through ten the AVRRDD will need to import a range of between 42,655 to 63,983 tons of out-of-district waste in addition to the existing 3,000 tons of out-of-district waste. Absent receipt of this waste stream, the AVRRDD will underfund its year six through ten budget by an average of two million, five hundred and fifty nine thousand, and three hundred and ten dollars (\$2,559,310) per year.

The AVRRDD 2003 budget strategy proposes to take even more out-of-district waste than set forth above, because it proposes to retire its fourteen million dollars (\$14,000,000) of bond debt early by importing additional out-of-district waste in the range of between 23,334 tons to 35,000 tons annually to produce additional annual revenue of one million, four hundred thousand dollars (\$1,400,000).

Thus, the AVRRDD's operation of the Mt. Carberry landfill is based on importing out-of-district solid waste in the following amounts: (a) in years 1 through 5 a range of between 54,174 tons and 79,758 tons per year, and (b) in years 6 through 10 a range of between 68,989 tons and 101,983 tons per year. None of this waste, however, can be legally disposed of in the Mt. Carberry landfill unless the AVRRDD has proven, and DES so approves under RSA 149-M:11, that there is an existing need for disposal capacity in these quantities for the disposal of New Hampshire waste.⁶ No such

⁵ At present, the AVRRDD does not appear to have a final budget; however, any changes in the 2003 budget discussed herein cannot change the key point that the AVRRDD must import significant amounts of out-of-district waste to balance its budget and hence will be required to demonstrate that the facility is needed to provide for the disposal of New Hampshire capacity under RSA 149-M:11.

⁶ Note, we make no statement on whether demonstration of the need for the disposal of in-state capacity in these amounts can be made successfully. We only note that such a demonstration is required and has not been made. Based on conversation with DES

determinations have been made, or are even the subject of an existing DES proceeding, and therefore the Boutin and Aries letters' reliance on expansion capacity at Mt. Carberry as a necessary factor to be accounted for in the NCES public benefit capacity analysis is misplaced.

2. Mt. Carberry is also Subject to an Economic Viability Test

RSA 149-M:11, IV requires that any public benefit determination by DES also include an evaluation of the economic viability of the facility. The Boutin and Aries letters fail to note this requirement or assess it in light of the need for Mt. Carberry to import out-of-district waste.

The AVR RDD's operation of Mt. Carberry is premised on the importation of significant amounts of out-of-district waste, and if it does not meet the public benefit requirements of RSA 149-M:11 or fails to acquire waste, then, under the AVR RDD 2003 budget, the facility is not financially viable and will impose a tremendous tax burden on the member cities and towns of the AVR RDD.

Even if such a public benefit determination could be demonstrated by AVR RDD for Mt. Carberry and were to be approved by the DES, the Boutin and Aries letters do not address the very practical issue of whether the AVR RDD has undertaken any critical analysis of whether the business plan to acquire these significant amounts of out-of-district waste can be successfully implemented given the available resources. In this regard note that the AVR RDD does not employ, or appear to make provision in its budget for marketing personnel, does not engage in hauling or transfer station operations out-of-district, and does not appear to have any significant out-of-district disposal contracts at present. Stated another way, it is one thing to project the amounts of out-of-district waste tonnage needed to balance the AVR RDD landfill budget and quite another thing to actually put in-place the mechanisms that will assist in achieving those tonnages. The Boutin and Aries letters provide no documentation that there is a reasonable likelihood that the out-of-district waste actually can be acquired in the amounts needed.

As noted above, the absence of the out-of-district waste stream means that the AVR RDD budget will be short an average of one million, six hundred seventy thousand, three hundred and thirty three dollars (\$1,670,333) per year in years one through five, and short an average of two million, five hundred fifty nine thousand, three hundred and ten dollars (\$2,559,310) per year in years six through ten. To put these budget shortfalls in perspective, if the AVR RDD is unable to meet the statutory public benefit requirement or to acquire waste, then under the 2003 budget, for example, its second year gross income is limited to the income derived from disposal of waste from Fraser Papers and the AVR RDD, which produces a total income of \$1,784,000. With that total income, the AVR RDD could pay the bond debt principle payment of \$700,000 and the bond debt interest payment of \$592,620, and have \$491,380 to apply to the Cianbro operating contract of \$1,171,206. This leaves the AVR RDD owing Cianbro \$679,826 in year two of the contract and also means the AVR RDD can not fund, among other items

officials, the AVR RDD has not filed any such application with DES as of November 14, 2002.

that year, \$210,000 for its statutorily mandated financial assurance mechanism to fund its landfill closure and post-closure costs, or any of the landfill administrative staff salaries and associated FICA and other benefits.

Although it may be possible for the AVRRDD to demonstrate that its Mt. Carberry landfill operation is financially sound, remedies for the above noted budget cash deficits appear problematic.⁷ The AVRRDD could increase its own disposal fees, but that level of increase would produce significantly out-of-market disposal fees for the AVRRDD member city and towns and most likely result in diversion of member solid waste to other, less expensive, disposal options thereby exacerbating the problem. The AVRRDD could rely on its ability to tax its member city and towns for these cash shortfalls. This option may not be acceptable, especially to the many smaller towns in the AVRRDD and may not be a financially viable option for any member city or town. The AVRRDD could seek to reduce its costs; however, the major cost is the obligation to pay ten million dollars (\$10,000,000) to acquire the facility. In an article in the November 12, 2002 Berlin Daily Sun (attached as Exhibit 2) AVRRDD officials were stated as having noted that if the district finds it can not meet its revenue needs, it can always sell the landfill. Such speculation by a prospective owner should give rise to careful analysis of the facility's financial viability by the DES when it receives the required application from the AVRRDD.

The Boutin and Aries letters ignore these very practical problems; no expansion capacity at Mt. Carberry can be available if the facility is not permitted to accept out-of-district waste in the quantities noted, and absent such waste amounts Mt. Carberry, as proposed by the AVRRDD, may not be a financially viable business.

III. The Aries Letter Overestimates Capacity From the Wheelabrator-Concord L.P. Facility Because It Does Not Account for Ash Disposal Capacity.

At the time that NCES submitted its Public Benefit Statement in April 2002, the Wheelabrator-Concord L.P. Waste-to-Energy Facility (the "Concord Facility") was permitted to accept 500 tons per day or 182,500 TPY of municipal solid waste for incineration.⁸ Subsequently, the Concord Facility was granted a permit modification that

⁷ It bears noting that we make no statement as to whether the AVRRDD Mt. Carberry proposed operation is in fact financially sound. We only note that such a demonstration has not been made by the AVRRDD or evaluated by the DES. Hence, inclusion of the expansion capacity of Mt. Carberry in the NCES analysis is inappropriate. The above data is presented to point out the legal need for such a determination by the DES and some of the issues to be examined in the DES's evaluation.

⁸ The Aries letter criticizes NCES's projections of the capacity of the Concord facility and the waste-to-energy facility in Claremont, because there are no "technical" reasons why those facilities would not continue to operate beyond the time that their above-market electricity sales contracts end in 2019 and 2007, respectively. The Aries letter, however, does not evaluate the impact the future market rate for electricity or operational costs may have on future operation. Notwithstanding that, NCES's capacity analysis examined capacity needs if the two facilities were to close when their electricity

allows the facility to accept 575 tons per day or 209,875 TPY. Based upon this new disposal rate, the Aries letter projects that the Concord Facility will provide 4,197,500 tons of disposal capacity during the 20-year planning period. The Aries letter over estimates the capacity provided by the Concord Facility by 1,119,333 tons, however, because it improperly accounts for disposal of ash generated by the Facility.

A waste-to-energy facility actually disposes of only about two thirds of the municipal solid waste it accepts, because these facilities produce one-third of that amount in ash residue, which must be landfilled. Consequently, while the Concord Facility has a nominal capacity of 209,875 TPY, its actual capacity, net of ash disposal, is 139,917 TPY. The facility will produce approximately 69,958 TPY of ash residue. The capacity associated with the need to dispose of this ash residue must be accounted for.

Currently, ash generated at the Concord Facility is disposed of in the Franklin landfill, which is dedicated to the disposal of Concord Facility ash. The Aries letter, assumes that the Concord Cooperative will provide disposal for all ash generated at the Concord Facility. Under the Franklin landfill's current standard permit the landfill would have reached capacity within eight years if the Concord Facility continued to incinerate 500 tons of municipal solid waste per day. Accordingly, in the April 2002 Public Benefit Statement, NCES accounted for the ash produced at the Concord Facility by offsetting the ash produced against the capacity of the Franklin landfill through the year 2009, and then reducing the nominal capacity of the Concord Facility to 2/3 beginning in 2010.

If the Concord Facility incinerates 209,875 TPY of municipal solid waste rather than 182,500 TPY (a difference of 27,375 TPY), it will produce an additional 9,125 TPY of ash residue. Assuming that the Franklin landfill has 486,667 tons of capacity remaining,⁹ the Franklin landfill will reach capacity in 7 rather than 8 years. Consequently, the Concord Facility can be said to have a capacity of 209,875 TPY through 2008. After that point, ash must be accounted for by reducing the capacity of the Concord Facility to 2/3 of its nominal capacity or 139,917 TPY. Consequently, the Concord Facility will provide an additional 109,500 tons of capacity during the years 2005 through 2008 ¹⁰ and an additional 231,167 tons of capacity during the years 2009 through 2024 ¹¹ for a total additional capacity during the 20-year planning period of 340,667 tons. This is 1,119,333 tons less than that erroneously projected by Aries Engineering.

Because Aries Engineering failed to take into account the disposal of ash generated at the Concord facility after 2008, DES should not accept the Aries letter's capacity projection for this facility. In evaluating the NCES Public Benefit Statement, DES could consider the Concord Facility capacity based upon the capacity approved at

sales contracts expired, and capacity needs assuming that both facilities continued to operate throughout the 20-year planning period.

⁹ This figure is derived by multiplying 182,500 TPY by 1/3 (the estimated amount of ash produced) and multiplying that number by the 8 years of capacity that DES projected the Franklin landfill had remaining.

¹⁰ $(209,875 \text{ TPY} - 182,500 \text{ TPY}) \times 4 = 109,500$.

¹¹ $16(2/3(209,875 \text{ TPY}) - 2/3(182,500 \text{ TPY}) - 1/3(182,500)) = 231,167$.

the time of NCES's submission; however, even if the capacity analysis in NCES's Public Benefit Statement is updated to include the additional 340,667 tons of capacity at the Concord Facility, a capacity shortfall continues to exist, and Stage IV provides the necessary public benefit. See the analysis presented in Section IV below.

IV. Even Assuming a Per Person Waste Generation Rate of 6.0 Pounds Per Day, The State Faces a Capacity Shortfall, and Stage IV of the NCES Landfill Provides a Public Benefit.

NCES prepared its Public Benefit Statement utilizing a per person waste generation rate of 6.4 pounds per person per day. At the time, this was the most current waste generation rate published by DES. In October 2002, DES recalculated the rate based upon the most current year's information and concluded that the rate for the previous year was 6.0 pounds per person per day. Discussions with DES personnel confirm that the waste generation rate varies over time, and has been increasing over time. DES personnel attribute the rise and fall in waste generation rates primarily to rises and falls in the general economy. NCES maintains that a rate of 6.4 pounds per person per day should be used to calculate shortfalls in capacity because use of the most conservative number provides greater assurance over a 20-year planning period that the state will have adequate disposal capacity during that period.

The Aries letter proposes the use of the 6.0 pounds per person per day number. Even if DES assumes a 6.0 pound per person per day waste generation rate, a capacity shortfall exists, because the Aries letter, as noted in Section I through III above, improperly calculates available capacity under the law. Using the Aries letter's generation calculations, the projected capacity shortfall is between 10,558,216 tons and 12,394,722 tons.¹² This shortfall is consistent with the ranges of shortfall projected by NCES, adjusted for the capacity that has been permitted at the Turnkey landfill, Mt. Carberry, and the Concord Facility. Adjusted to reflect the capacity permitted at Turnkey and the Concord Facility since April 2002, NCES's calculations would yield a shortfall of between 10,550,000 to 13,250,000 tons assuming a 40% diversion rate throughout the entire period and 12,400,000 to 15,100,000 tons assuming a tiered waste diversion rate escalating to 40% in the year 2014. See Section VI.

V. DES Considers Regional Needs in Making a Public Benefit Determination.

When DES makes a public benefit determination, RSA 149-M:11, III (a) requires DES to assess: "[t]he short-and long-term need for a solid waste facility of the proposed type, size, and *location* to provide capacity to accommodate solid waste generated within the borders of New Hampshire" Accordingly, NCES provided DES with an analysis of the potential regional capacity shortfall. The Aries letter takes exception to the region identified by NCES because some of the towns falling within the region are equidistant from the NCES and Turnkey landfills and a few are closer to Turnkey.

¹² These figures are derived by subtracting Aries's overestimation of Turnkey capacity (11,400,000 tons), Concord facility capacity (1,119,333 tons), and Mt. Carberry capacity (97,500 tons) from Aries's calculated capacity surplus of between 222,111 tons and 2,058,617 tons. See Table 1 and notes thereto.

NCES defined its region as those New Hampshire communities within a sixty-mile radius to the south of the NCES landfill and the northern portion of the state. This translates roughly into dividing the state into half with the line running through Lebanon and Wolfeboro. Although it could have, NCES did not assume that all of the communities in that area would actually utilize Stage IV of the NCES landfill. The communities served by facilities in Conway, Lebanon, Claremont, and Concord were excluded. This area comprises approximately half of the state geographically, but a much smaller fraction of the state in terms of population and waste generation. The Aries letter points out that the NCES facility provides capacity to New Hampshire communities that are much closer to the Turnkey landfill and as far as 123 miles distant from the NCES facility. While the Aries letter argues that southern residents' willingness to transport their waste to NCES indicates that some North Country towns may find it reasonable to pay additional transportation costs and dispose of their waste at the Turnkey landfill, North Country residents may feel differently if they understood that transportation of their waste would cause a 10% or greater increase in their disposal rates. If anything, the demonstrated willingness of residents in the southern portion of New Hampshire to transport their waste to the NCES landfill indicates that Stage IV will provide both a statewide and regional public benefit.

VI. NCES's Assumptions Regarding Waste Diversion Rates Are Reasonable and Appropriate.

Contrary to the implications of the Boutin letter, NCES gives full credit to the General Court's goal of attaining a 40% diversion rate and to the General Court's hierarchy of solid waste management methods. The Boutin letter fails to take into account that, even if the state meets the diversion goal of 40%, then 60% of the waste stream will still need to be disposed of through incineration and/or landfilling. Consequently, NCES's landfill remains an essential part of any integrated system of solid waste management in New Hampshire.

In its Public Benefit Statement, NCES considered two scenarios, both of which included source reduction and recycling. One scenario was based on a 26% diversion rate, a higher diversion rate than has ever been achieved in New Hampshire, escalating to the goal of 40% diversion in 2014. The second scenario assumed that the diversion rate would be 40% throughout the entire 20-year planning period. When calculating waste generation based upon the escalating diversion rate scenario, NCES assumed that the state would achieve a 26% diversion rate during the years 2005 through 2009, 33% during the years 2010 through 2014, and 40% during the years 2015 through 2024. The reasonableness of these assumptions is confirmed by the fact that the Boutin letter asks DES to credit the capacity projections presented in the Aries letter, which are based on virtually the same assumptions.¹³

¹³ The Aries letter assumes a diversion rate of 26% from 2005 through 2009, 33% from 2010 to 2014, and 40% from 2014 to 2024.

VII. DES's Draft Solid Waste Plan Demonstrates that Stage IV of the NCES Landfill Provides a Public Benefit.

Goal 4 of the September 2002 State Draft Solid Waste Plan is to "Assure disposal capacity for New Hampshire." DES has recognized that "Without sufficient disposal facilities, haulers will need to transport waste long distances. This would be unacceptable for the long term considering the costs of hauling, the potential for liability and environmental impact, and the strategies devised by [neighboring] states to curb imports." Draft Plan at 10. DES reported that Governor Shaheen established a Solid Waste Task Force to investigate the adequacy of capacity, concerns about industry concentration, and increasing costs of solid waste disposal. "The Task Force found that there are two sides to assuring adequate capacity: using existing capacity wisely; and encouraging new capacity." *Id.* Recognizing that "most of New Hampshire currently relies upon privately owned capacity, the Task Force recommended facilitation of collaborative host community agreements." *Id.* DES, for its part, "places a high priority on extending capacity for the disposal of solid waste" in accordance with the Task Force's recommendations. *Id.*

Although most of New Hampshire relies upon privately owned capacity, there are only two significant privately owned landfills in New Hampshire: the NCES landfill in Bethlehem and the Turnkey landfill in Rochester.¹⁴ Private landfills with integrated facilities and large service areas have proven to be the most economic alternative to municipally owned and operated landfills. If this were not so, the Task Force would not have found it necessary to encourage the public development of new capacity -- that development would take place automatically as a result of market forces. Additionally, The Task Force found its genesis in concerns over industry concentration. If NCES Stage IV is not approved, then only one significant private landfilling company would remain in New Hampshire. This lack of competitive market prices could adversely impact the cost of disposal to the state's citizens, businesses, and communities.

The Boutin letter also complains of the importation of out-of-state waste into the Town of Bethlehem. These concerns are unfounded with regard to NCES's landfill, however, because NCES accepts only a limited amount of out-of-state waste. The vast bulk of the waste disposed of at the NCES landfill originates in New Hampshire. NCES has informed DES that since NCES began operation of Stage III, an average of about 84% of the waste disposed of in Stage III originated in-state.

In comparison, DES reported in August 2002 that during 2001 the Lebanon municipal landfill accepted 33,426 tons of New Hampshire-generated waste and 15,326 tons of waste generated out-of-state. At the Lebanon landfill, then, over 31% of the waste disposed of originated from out-of-state.¹⁵ At the Turnkey landfill, 1,101,922 tons of waste was disposed of, 48% of which originated from out-of-state. By comparison,

¹⁴ There are also two privately owned waste-to-energy facilities in the state, both of which ultimately are owned by the same company that owns the Turnkey landfill in Rochester. While these facilities provide capacity, they do not alleviate industry concentration.

¹⁵ Public ownership of disposal capacity provides no guaranty of reducing the importation of out-of-state waste.

NCES accepts approximately one-third the percentage of imported waste than is accepted by the major landfill in the state, and only one half the percentage of imported waste that is accepted by some municipally owned landfills. Based on the foregoing, criticism for the disposal of out-of-state waste cannot and should not form the basis of the denial of a finding of public benefit for Stage IV of the NCES landfill.

Lastly, failing to find that Stage IV of the NCES landfill provides a public benefit would require communities in the northern areas of the state to either pay more for the disposal of their waste in terms of a higher tipping fee or to pay more for the development of transfer stations and the long-distance transport of their waste to southern New Hampshire or neighboring states. While the Aries letter finds an assumed 10% increase in the cost of waste disposal de minimis, North Country residents may feel differently.

The governor's Task Force recognized that extending the lives of existing landfills should be one of the state's goals. The Boutin letter would have DES extend the life of facilities such as Mt. Carberry and Turnkey – just not the life of the facility located in Bethlehem. Clearly, the Boutin letter's position is not consistent with draft state plan policies, the realities of waste disposal in New Hampshire, and is not a credible policy position for state planning.

VIII. The Boutin Letter Claims That The States' Political Subdivisions Have Authority It Concedes Is Not Even Given The State Under RSA 149-M Or The Commerce Clause

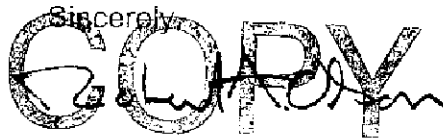
The Boutin letter states that "...it is true that out-of-state waste may not be excluded from New Hampshire's commercial landfills..." The Boutin letter also implicitly recognizes that DES's landfill siting authority preempts local regulation when it states "I submit that the DES' authority to preemptively site a commercial landfill is limited to the express purposes of RSA 149-M." Having established these principles, however, the letter then attempts to limit DES authority by drawing a distinction between the preemptive effect of DES authority to site a landfill generally and the preemptive effect of DES authority to site a landfill that accepts out-of-state waste. The Boutin letter claims that DES preemptive authority only applies to landfill capacity for New Hampshire waste. This distinction lacks any basis in law. The Boutin letter cites no provision of RSA 149-M to establish the legal basis for such a distinction, and in fact could not do so. No provision of RSA 149-M, fairly read, establishes any such limitation on DES's preemptive authority to comprehensively regulate landfills.

The distinction drawn by the Boutin letter also ignores the reality of landfill development and operation. Landfills are not developed exclusively as accepting either only in-state or only out-of-state waste. For example, about 50 percent of the waste disposed of at Turnkey Landfill in 2001 was out-of-state waste.¹⁶ Given this business reality, the Boutin letter's distinction, while admitting that DES cannot preclude out-of-state waste, implies that DES cannot site a facility that would accept out-of-state waste

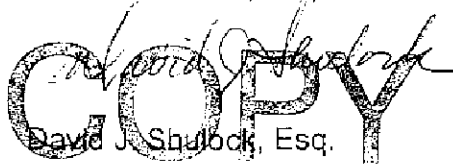
¹⁶ Even the proposed AVRRDD operation at the Mt. Carberry Landfill proposes to take significant amounts of out-of-district waste, and presumably, given the amounts, some of that will be out-of-state waste.

as part of its disposal waste stream, unless also agreed to by the local government. In addition to being contrary to RSA 149-M, this position is implausible when taken to its logical conclusion. If accepted, it would mean that local governments had veto power over every DES landfill determination (inclusive of public benefit determinations) and could thereby preclude disposal of out-of-state waste and the siting of all landfills. Thus, while the Boutin letter concedes that the State cannot preclude out-of-state waste from New Hampshire landfills, it seeks to reserve that very power to the political subdivisions of the State. Commerce Clause jurisprudence recognizes no such distinction.

Notwithstanding the Boutin letter's attempt to raise the specter of out-of-state waste and Commerce Clause issues in addressing the NCES landfill and its public benefit, it bears repeating that, on average, 84% of the waste disposed of in Stage III of NCES's landfill is in-state waste. Thus, on a percentage basis, NCES has accepted significantly less out-of-state waste than was accepted at either the Lebanon municipal landfill or at Turnkey landfill. See Section VII above. Clearly, the NCES landfill serves the capacity needs of this state and provides a public benefit.

Sincerely,
A large, stylized, and somewhat illegible handwritten signature in dark ink, appearing to read 'Robert A. Olson'.

Robert A. Olson, Esq.

A large, stylized, and somewhat illegible handwritten signature in dark ink, appearing to read 'David J. Shulock'.

David J. Shulock, Esq.

cc: Philip J. O'Brien, Ph.D., Director, Waste Management Division, NHDES
Richard S. Reed, Administrator, Solid Waste Management Bureau, NHDES
Town of Bethlehem Board of Selectmen
Edmund J. Boutin, Esq.
Thomas E. Roy, P.E., P.G.

Table 1
Disposal Capacity for New Hampshire Waste (Tons)
Years 2005 through 2024
Corrected Aries' Estimate

20 Year Disposal Capacity Estimates	Line#					Waste to Energy		C&D Processing			Potential 20-Year Disposal Capacity	Projected 20-Year Waste Generation (25% to 40% Diversion)	Waste Disposal 25% to 40% Diversion Capacity (Surplus/Shortfall)	Projected 20-Year Waste Generation (40% Diversion)	Waste Disposal 40% Diversion Capacity (Surplus/Shortfall)
	Turnkey	Mt. Carberry	Nashua	Conway	Lebanon	Claremont	Concord	LL&S	ERRCO	Turnkey					
Aries' Estimate	17,570,000	650,000	1,350,000	200,000	960,000	374,000	4,197,500	620,000	974,000	2,000,000	28,905,500	28,683,389	222,111	26,846,883	2,058,617
Corrected Aries' Estimate	6,170,000	552,500	1,350,000	200,000	960,000	374,000	3,078,167	620,000	974,000	2,000,000	16,285,667	28,683,389	(12,394,722)	26,846,883	(10,558,216)

NOTES

1. The Aries' Estimate assumes:

- a) Turnkey will accept 6,170,000 tons for 2005 through 2012 and that a permit application for disposal capacity for subsequent years will be submitted in the spring of 2003 and approved with a fill rate of 950,000 TPY for 2013 through 2024. (Note that such an application has not been submitted or approved.)
- b) Mt Carberry accepts the permitted 32,500 tons per year (TPY) for 20 years. (Note that NHDES data indicate the site life is through 2021 not 2024.)

c) Nashua accepts 80,000 TPY until 2021.

d) Conway accepts 10,000 TPY for 20 years.

e) Claremont accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 20 years

f) Concord accepts 575 tons per day (209875 TPY) for 20 years and the cooperative provides ash disposal.

g) Turnkey accepts 100,000 TPY of C&D waste for 20 years.

2. The Corrected Aries' Estimate is based on:

a) Turnkey will accept 6,170,000 tons for 2005 through 2012, the date the permitted capacity is expected to be filled.

b) Mt Carberry accepts the permitted 32,500 tons per year (TPY) until 2021.

c) Nashua accepts 80,000 TPY until 2021.

d) Conway accepts 10,000 TPY for 20 years.

e) Claremont accepts 43,000 TPY from NH and produces 24,300 TPY of ash providing a net capacity of 18,700 TPY for 20 years.

f) Concord accepts 575 tons per day (209,875 TPY) for 20 years and the cooperative provides ash disposal from 2005 through

2008. Adjusting for ash disposal, the net capacity for years 2009 through 2024 is 139,917 TPY.

2003 PROPOSED MT. CARBERRY LANDFILL BUDGET**EXPENSES**

CIANBRO		\$ 1,138,000.00
Administrative Staff Salaries		\$ 120,000.00
Employer's Share FICA & Medicare		\$ 18,500.00
Employee Benefits		\$ 24,000.00
Interest on BAN		\$ 225,000.00
Interest on RAN		\$ 20,000.00
Maintenance		\$ 70,000.00
Legal	*bond proceeds for \$40,000	\$ 75,000.00
Bond Fee	*bond proceeds	\$ 15,000.00
Hydroblasting Leachate Pipe		\$ 65,000.00
Property & Liability Insurance		\$ 55,000.00
Permits		\$ 25,000.00
Monitoring/Reporting		\$ 35,000.00
Volume Survey		\$ 5,000.00
Bonding		\$ 1,000.00
Annual Report		\$ 10,000.00
Operating Manual		\$ 10,000.00
Audit		\$ 15,000.00
Telephone (cell & at garage/scale house)		\$ 9,000.00
Propane		\$ 8,000.00
Electricity		\$ 12,000.00
Outside Services	*bond proceeds for \$9,000	\$ 58,000.00
Office Supplies		\$ 5,000.00
Office Equipment & Furnishings		\$ 15,000.00
Office Rent		\$ 6,000.00
Postage		\$ 3,500.00
Financial Assurance Bond		\$ 210,000.00
Standby Trust Agreement		\$ 1,000.00
Design Engineering Cell 1 & 2 Closure & Construction Stage 7	*bond proceeds	\$ 215,000.00
Temporary Closure Cells 1 & 2	*bond proceeds	\$ 286,000.00
Scale System, Scale House	*bond proceeds	\$ 175,000.00
Contingency		\$ 150,000.00
		\$ 3,096,000.00

Income

Fraser 50,000 tons @\$19	\$ 950,000.00
District Towns 12,000 tons @\$87	\$ 804,000.00
Non-District Towns 3,000 tons @\$67	\$ 201,000.00
Anticipated Interest Income	\$ 30,000.00
Income needed from additional tonnage	\$ 371,000.00
Bond Proceeds to be used *	\$ 740,000.00
	\$ 3,096,000.00

Mt. Carberry Landfill Initial Budget Projections

First 5 years, we need an average of \$1,670,333 per year of additional income (beyond Fraser, District towns and non-member towns) to meet budget (based on initial projections)

This would equate to.

27,840 tons @\$60 per ton
30,370 tons @\$55 per ton
33,407 tons @\$50 per ton
41,758 tons @\$40 per ton

Years 6 through 10, we need an average of \$2,559,310 per year of additional income (beyond Fraser, District towns and non-member towns) to meet budget (based on initial projections).

This would equate to.

42,655 tons @\$60 per ton
46,533 tons @\$55 per ton
51,186 tons @\$50 per ton
63,983 tons @\$40 per ton

Strategy:

In addition to the income required to meet budget, bring in an additional \$1,400,000 of income annually, for the first ten years of the bond (2004 - 2013). This would accumulate \$14,000,000 plus interest so we could pay off the bond in the 11th year (2014) and fund, in a bank account, our financial assurance bond, which will fluctuate but is presently \$6,991,490. Initially a sum, to be determined, will be used for cash flow, so we do not have to use revenue anticipation notes any longer than necessary plus an amount, to be determined, will be placed in a landfill reserve fund to cover unanticipated maintenance costs over and above the annual budgeted line item.

23,334 tons @\$60 per ton
25,454 tons @\$55 per ton
28,000 tons @\$50 per ton
35,000 tons @\$40 per ton

Public hearing set to answer questions about landfill purchase

Barbara Tetreault

BERLIN-GORHAM- The public has an opportunity Thursday night to comment and ask questions about the proposed purchase of the Mount Carberry landfill by the Androscoggin Valley Regional Refuse Disposal District.

The hearing is set for 6 p.m. at the Berlin city hall auditorium.

The district has signed a letter of intent to purchase the landfill for \$10 million from Fraser Papers which put it out for bid. The district has voted to bond \$14 million to cover the purchase and associated capital costs.

District officials will be meeting tonight with town and city officials to discuss questions and concerns that municipal officials have raised.

Some of the meeting will be in non-public session and the rest will be in public session.

The public hearing and tonight's meeting come as Gorham town officials are considering holding a special town meeting to allow residents to decide if the town should support the bonding. The district's bylaws give the legislative body of each individual member town up to 60 days to vote on whether to reject the bond issue. If one community votes to reject the bonding, the entire purchase is off.

Gorham selectmen agreed last week to wait until after Wednesday's public hearing to vote on holding a special meeting. Selectman Michael Waddell, who wants a special town meeting, said time is running short for the town because it must provide a ten day notification of a special meeting. The 60-day period expires Dec. 5.

At a non-public session last week with District administrator Sharon Gauthier and consultant Raymond Danforth, Berlin and Gorham officials raised questions about a number of issues.

One is the 20-year agreement the district must reach with the Maine firm, Cianbro, to operate the landfill. The hiring of Cianbro is a condition Fraser has placed on the sale.

Minutes of the non-public session show Waddell questioned Cianbro's fee and whether the district could terminate the contract for non-performance.

The proposed 2003 budget for the landfill prepared by Gauthier estimates Cianbro would receive an estimated \$1.13 million to operate the landfill. At a meeting yesterday with the local press, Gauthier and Danforth said that figure includes the salaries and benefits for the five people and various part-time personnel that will work at the landfill. The figure includes some equipment that Cianbro will provide, sand and gravel for the landfill, sand and salt for the access road, propane, diesel fuel, security, and necessary maintenance.

Danforth said the \$1.13 million is a projection and said actual payment will be based on hours and equipment. He said he believes the figure in the budget may be a little on the high side.

The contract with Cianbro, which was finalized by the district Friday, provides escape clauses and allows the district to terminate the arrangement for non-performance. Gauthier said the contract is being reviewed by the district's lawyers and the state Department of Environmental Services. She expressed hope that it will be available for public release at Thursday's hearing.

City Councilor Paul Grenier expressed concern about the local people currently working at the landfill. He said the district should require that Cianbro hire the current landfill employees. Cianbro has agreed to interview the local employees for jobs.

Budget projections show that the district will need an average of \$1.6 million in additional income per year for the first five years to meet its budget. Depending on the tipping fee the district sets, that equates to 27,840 tons to 41,758 tons. That is above the 12,000 tons of municipal solid waste from district members, the additional 3,000 tons the landfill receives from other area towns, and the 50,000 tons of sludge from Fraser Papers.

In years six through ten, the district projects it needs to generate an average of \$2.5 million annually in outside revenue.

While it may be slow at first, Danforth and Gauthier said they are confident the district can attract the added waste it needs. They report the district has already been contacted by four interested parties. But if the district finds it can not meet its revenue needs, the pair noted it can always put the landfill up for sale. Danforth said there were other bidders for the property and the district was told it received a \$26 million bid.

On top of the waste required to meet its budget, the district hopes to bring in another \$1.4 million annually to allow it to pay off the \$14 million bond early and set up a fund to raise money needed to close and monitor the landfill down the line. Until the district raises the closure money, it will take out a financial assurance bond at an annual cost in the \$200,000 range.

The district has already applied to have the state permit for the landfill amended to allow the additional municipal waste. The current permit limits the landfill to 32,500 tons of municipal solid waste annually. The permit also limits the landfill to accepting sludge from the Berlin and Gorham mills and the Wausau-Mosinee mill in Groveton. The Groveton mill does not currently use the landfill.

The district provided information on Cianbro which is described as one of the largest civil and heavy industrial construction and construction services companies on the East Coast. The employee-owned company has been in existence for 50 years and has gross annual sales of over \$360 million.

Prior to Thursday's hearing, there will be a meeting to allow officials to bring the district representatives up to date on the latest negotiations and developments with the purchase.

THE STATE OF NEW H.

DEPARTMENT OF ENVIRONMENTAL SERVICES
WASTE MANAGEMENT DIVISION

IN RE: NORTH COUNTY ENVIRONMENTAL SERVICES, INC.

MOTION TO STAY APPROVAL PROCEEDINGS
ON NORTH COUNTY ENVIRONMENTAL SERVICES, INC.'S
APPLICATION FOR STAGE IV PERMIT

The Intervener, **Town of Bethlehem**, (the "Town") by and through its counsel, Boutin & Associates, P.L.L.C., submits the following Motion to Stay the Approval Proceedings on North County Environmental Service's Stage IV application:

1. In prior litigation between the parties in the Grafton County Superior Court, the Court recognized that RSA 194-M does not grant the state exclusive regulatory control over solid waste management. North County Environmental Services, Inc. v. Town of Bethlehem, Docket #98-E-0141, #98-E-0151, Merits Order dated 4/22/99, pp. 19-20. The Court held that the "statutory scheme expressly recognizes the regulatory authority of municipalities over the operation of solid waste disposal facilities under their territorial jurisdiction." Id. at 19. (See Order, attached to this pleading).
2. In the prior litigation, the Court also ruled that the 1976 Variance did not apply to the entire parcel owned by NCES. North County Environmental Services, Inc. v. Town of Bethlehem, Docket #98-E-0141, #98-E-0151, Merits Order at p. 16, *Affirmed by North County Environmental Services, Inc. v. Bethlehem*, 146 N.H. 348, 354 (2001) ("NCES I"). The Court made clear that NCES has no local approvals to expand its landfill beyond the 51 acres addressed in NCES I. Id.
3. As applied for, part of the Stage IV footprint lies outside the 51 acres addressed in NCES I.

4. North Country Environmental Services, Inc. v. Town of Bethlehem, et al, Docket #01-E-0177, is currently pending before the Grafton County Superior Court. The Town of Bethlehem's Counterclaim asks for declaratory relief and injunctive relief against NCES, relative to NCES's planned Stage IV expansion.

5. Count IV of the Town's counterclaim asks the Court for a declaration that it may impose its Zoning Ordinance, including its prohibition against expansion of landfills, on any NCES application that includes expansion beyond and outside the 51 acres addressed in NCES I.

6. Count V of the Town's counterclaim asks the Court for injunctive relief against NCES from proceeding through the process without first obtaining local approvals.

7. Nothing in RSA 149-M affects any obligation on the part of NCES to obtain local approvals under all applicable, lawful local ordinances, codes, and regulations not inconsistent with RSA 149-M.

8. The Grafton County Superior Court has set a trial date for the week of December 16, 2002.

WHEREFORE, the Intervenor now requests that this Department:

- A. Grant Intervenor status to the Town of Bethlehem,
- B. Grant a stay of the NHDES proceedings on NCES's Stage IV Application until which time the Grafton County Superior Court enters a final order in Docket #01-E-0177.
- C. Grant the Intervenor such other and further relief as may be just.

Respectfully submitted,

TOWN OF BETHLEHEM

By Its Attorneys,

BOUTIN & ASSOCIATES, P.L.L.C.

Date: October 8, 2002

By,



Brenda E. Keith
One Buttrick Road
P.O. Box 1107
Londonderry, NH 03053
(603) 432-9566

CERTIFICATE OF SERVICE

I, Brenda E. Keith, Esquire, hereby certify that I made service of the foregoing Motion to Stay Proceedings by hand-delivering the same to Bryan K. Gould, Esquire, opposing counsel and to the Town of Bethlehem.

Date: October 8, 2002

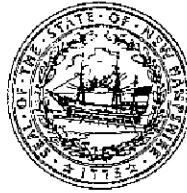


Brenda E. Keith

ATTORNEY GENERAL
STATE OF NEW HAMPSHIRE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

PHILIP T. MCLAUGHLIN
ATTORNEY GENERAL



STEPHEN J. JUDGE
DEPUTY ATTORNEY GENERAL

November 14, 2002

Town of Bethlehem

Docket #

Exhibit K

03-05 WMC

VIA FAX AND FIRST CLASS MAIL

Brenda E. Keith, Esq.
Boutin & Associates, P.L.L.C.
One Buttrick Road
P.O. Box 1107
Londonderry, NH 03053

Re: North Country Environmental Services, Inc.
Motion to Stay Approval Proceedings

Dear Attorney Keith:

On October 8, 2002, at a public hearing in the Town of Bethlehem, you hand delivered to Philip J. O'Brien, Ph.D., Director of the Waste Management Division at the Department of Environmental Services ("Department"), a Motion to Stay Approval Proceedings on North Country Environmental Services, Inc.'s ("NCES") Application for the Stage IV Permit. The Motion asks the Department to grant the Town intervenor status and to stay proceedings on NCES' application for approval of Stage IV of the Bethlehem landfill. Dr. O'Brien has asked me to respond directly to you.

Procedurally, the Department will treat the Town's motion as comments submitted in the context of the solid waste permit review process. This is the only procedural mechanism for the Department to consider the Town's requests, as there is no pending adjudicatory proceeding and the Department has not initiated a proceeding in which the Town could intervene. Although the Department is not required to respond to comments before taking final action on the permit application, it is appropriate to address the Town's requests at this time.

The Department's review of NCES' application for approval of the Stage IV landfill is subject to the requirements of RSA 541-A:29, as well as to the procedures set forth in the Solid Waste Management Rules, which have been adopted pursuant to RSA 149-M and appear at NH CODE ADMIN RULES Part Env-Wm 100 *et seq.*

Under RSA 541-A:29, II(a), the Department must apply nonadjudicative processes in processing applications, if it is not precluded by law from doing so. Similarly, the Solid Waste Management Rules at Part Env-Wm 304 set forth nonadjudicatory procedures for review of applications for solid waste permits and modifications thereto.

In particular, Part Env-Wm 304.07 requires the Department to conduct a technical review of complete applications and to consider all information received from the applicant and the host municipality, among others. The Department must also consider all information received from persons participating in a public hearing pursuant to Part Env-Wm 304.08(a). This provision requires that a public hearing be held on all permit applications, including modifications to-existing permits, except as excluded by Env-Wm 304.08(b). Under Part Env-Wm 204.01(c), the public hearings are nonadjudicatory in nature.

Thus, although the Department cannot grant the Town's request for intervenor status, it will review and consider all information submitted by the Town during the permit review process. This will include consideration of information presented by the Town during the October 8, 2002 public hearing on NCES' application.

As for the Town's request that the Department stay the permit review process, the Department is not authorized to suspend its technical review of the application if the application is complete. (See Part Env-Wm 304.07(a)). NCES has submitted a complete application and the Department must determine, within the time limits prescribed by law, whether the proposal meets all applicable criteria under the solid waste rules. (See Part Env-Wm 304.07(a)(1)).

The Department is aware of ongoing litigation between the Town and NCES on whether NCES can expand the landfill beyond the fifty-one acre tract that was the subject of prior litigation. However, even if the Department were authorized to vary the review process on this basis, proceeding with the permit review process is consistent with recent rulings in the pending litigation. In particular, the Grafton County Superior Court recently dismissed the Town's claims for injunctive relief designed to prevent NCES from proceeding with the pending application. The Court found that the application for a permit did not rise to the level of imminence or irreparability that an injunction is designed to relieve. See *NCES v. Town of Bethlehem*, No. 01-E-0177, Order on Motion to Dismiss Counterclaims (October 8, 2002).

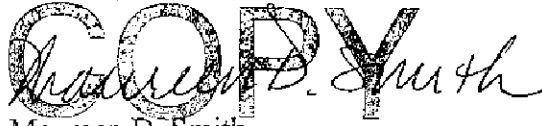
We note, however, that the Court also refused to dismiss the Town's claims regarding declaratory relief on the limits of landfill expansion. The Department's technical review is in preliminary stages and, if a standard permit is granted, no

Brenda E. Keith, Esq.
Re: North Country Environmental Services, Inc.
Page 3

construction will take place until additional application is made to the Department in the form of a Type II Modification and a Notice of Intent to Construct.

Please feel free to contact me if you have any questions.

Sincerely,



Maureen D. Smith
Senior Assistant Attorney General
Environmental Protection Bureau

cc: Board of Selectman, Town of Bethlehem
Philip J. O'Brien, Ph.D., P.G.
Richard S. Reed, NHDES
Bryan K. Gould, Esq.

Town of Bethlehem

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603-869-3351/ 869-2042 fax 603/869-2280 email tob@together.net

Town of Bethlehem
Docket #
Exhibit L

03-05 WMC

Mr. Richard Reed
NH Department of Environmental Services
6 Hazen Drive P.O. Box 95
Concord, NH 03392-0095

FEB 21 2003

February 17, 2003

Dear Mr. Reed:

The Bethlehem Board of Selectmen is making this formal request for NH DES to schedule a second Public Hearing on the Permit Application for a Solid Waste Landfill North Country Environmental Services Inc (NCES) Stage IV development. The Town of Bethlehem's copy of the application for a new NCES landfill (Stage IV) was not complete until the Town received a section omitted from the original application. In accordance with Env-Wm 314.12(e) and 314.12(f) the applicant shall provide the estimated costs of closure, post closure monitoring and a financial assurance plan in accordance with Env-Wm 3100. All of the Town's mail is kept, none of this information ever existed in Bethlehem's correspondence files. NCES claims that the documents were sent to the Town, yet has no evidence such as a signed receipt. Our accountant needs time to analyze these figures and now cannot begin until after April 15. This information was received February 13, 2003.

None of the financial documents for Stage IV were included in the original application, rendering the Permit Application for Stage IV incomplete at the time of the October 8, 2002 Public Hearing. This information is part of the NCES Stage IV Standard Permit Application and therefore, per Env-Wm 303.07 of the New Hampshire Solid Waste Rules, the applicant is required to provide a copy to the town in which the facility is located for the Permit Application to be complete.

The omitted materials include such significant information as the plans and estimated cost of closure for Stage IV. And since the Stage IV design contemplates an overlay and height increase on top of Stages I, II, and III, none of which has come under official closure yet, then such plans and costs would have to include those stages as well.






Town of Bethlehem

This expansion has a profound effect on the welfare and well being of Bethlehem's residents. We are a poor town with a high tax rate. The financial implication of a legal battle with a corporation that outspends the town fifty to one is devastating. Not questioning safety aspects, the appearance of releasing thirty tons of leachate particulate or more from the evaporation process, as well as the fifty acre scar on our visible landscape from the existing landfill, has long term financial implications that will depress the Towns tourism image forever. DES received four (4) odor complaints in January, 2003.

The current facility has capacity until 2005, leaving plenty of time if the development progresses, to conduct a second Public Hearing. Considering the short and long term implications this expansion would have on Bethlehem, it is the opinion of the Select Board that this request for a second Public Hearing should be granted.

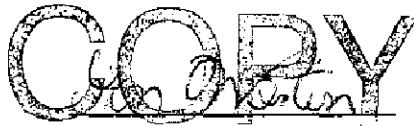
Sincerely, Bethlehem Board of Selectmen

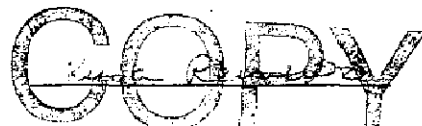
Steve Huntington

Judy Wallace

George Manupelli



Lon Weston



Kristen Reinhold

cc Maureen Smith, Attorney General

cc Senator John T. Gallus, Representative Edward D. Densmore

cc Philip J. O'Brien, Ph. D., Director, Michael Guilfooy, P.E.

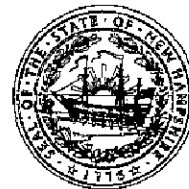
cc Edmund Bourin





State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2900 FAX (603) 271-2456



March 13, 2003

Brenda Keith, Esquire
Boutin & Associates
PO Box 1107
Londonderry, NH 03053

Town of Bethlehem
Docket # ~~03-05 WMC~~
Exhibit M

**Subject: North Country Environmental Services
Proposed Stage IV Development
Bethlehem, New Hampshire
NH DES Response to Public Comments**

Dear Attorney Keith:

The Department of Environmental Services, Waste Management Division (Department) has reviewed oral testimony provided during the public hearing held on October 8, 2002, and the written comments received for the project referenced above. Pursuant to Env-Wm 304.07(b), these comments were taken into consideration as part of the technical review of this application. In an effort to keep the public informed regarding how the Department addressed these concerns and/or to clarify its position relative to certain issues, the Department has elected to present a comprehensive response in this single letter directed to abutters, those who attended the public hearing and provided their address, and those who provided written comments. The questions/responses have been grouped into blocks for the purpose of presentation in this letter.

1) *Commenters expressed the opinion that state laws, rules and enforcement have been modified at the request of or for the benefit of NCES, in particular, a) Env-WM 404.01 (mixture rule), b) RSA 149-M:9, VII (local approvals) and c) Department fine procedures.*

Environmental regulation is a continuously evolving process. Environmental rules change in response to changes in governing statutes, technical advances and when rules become outdated.

a) The 100 parts per million (ppm) concentration of hazardous constituents portion of the hazardous waste mixtures rule is an example of a rule that became outdated (ref. Env-Wm 404.01). This rule was adopted in 1991 because the Department had no way to regulate many highly contaminated organic wastes, which at the time, could be legally disposed in unlined solid waste landfills. The rule was not health-based for individual hazardous components and the level was set, somewhat arbitrarily, at 100 ppm. However, the rule did address a legitimate concern at the time. In 2000, the Department adopted the TCLP organics standard for determining characteristic hazardous waste, which is health-based and EPA has added a 10% limit for organics in determining

EJB
Tom Roy

hazardous waste. This standard makes this portion of the Department's Hazardous Waste Rules more consistent with national standards and more meaningfully provides for health risk assessment.

b) In 1996, RSA 149-M:9, VII was adopted by the legislature to read as follows:

"The issuance of a facility permit by the department shall not effect any obligation to obtain local approvals required under all applicable, lawful local ordinances, codes, and regulations not inconsistent with this chapter. Local land use regulation of facility location shall be presumed lawful if administered in good faith, but such presumption shall not be conclusive."

In enacting this version of the statute, the legislature eliminated a provision that the permittee submit evidence of local approval to the Department. This provision was eliminated because it potentially placed the Department in the position of determining the validity of the representations being made. The Department is not the appropriate body to make a legal determination whether or not local zoning ordinances apply to a facility or if a local approval is valid. The statute, as it currently stands, does not eliminate a permittee's obligation to obtain lawful local approval.

c) Compliance issues at the NCES facility have included groundwater contamination, filling of the landfill beyond the permit limits, leachate breakouts, odor, landfill gas migration, vector (i.e., bird) control, and the late submittal of monitoring reports. Efforts on the part of the Department to have these deficiencies corrected have typically included verbal communications, written correspondence, and the use of Administrative Orders and Fines. It is noted that an Administrative Order was issued in 1993 for the overfilling of a portion of Stage I and a Letter of Deficiency and Administrative Fine were issued in May, 2000 for the violations of the mixture rule relative to leachate. The Department believes that compliance with environmental regulation is best ensured by using a multi-tiered, multi-media approach starting with education and outreach, and proceeding successively to compliance assistance, compliance monitoring, and appropriate enforcement.

The Department's general approach to a violation is to take action that is appropriate and likely to achieve the desired outcome. In most cases, the desired outcome is current and future compliance with applicable requirements and, if needed, remediation of any harm to the environment.

2) *Commenters have asked what the Department's role is in the review of permit applications and have expressed the opinion that the department seemingly favors business interests over local opinion.*

The Department as a whole has many functions, which include outreach, pollution prevention, remediation, first response, criminal investigations, compliance and

permitting in a multi-media environment. In terms of permitting, enabling statutes such as RSA 149-M give the Department the authority to issue permits, in this case permits for solid waste facilities. The statute also enables the Department to write rules consistent with the statute that specify the requirements for obtaining such permits. The Department's role in permitting a new solid waste facility is to ensure that that facility meets the requirements set forth in the rules. If the Department determines that an application meets the regulatory requirements, it must issue a permit, which can contain conditions. The Department bases its decision on specific requirements contained in the rules, engineering judgment and legal interpretations from the Department of Justice if necessary. The Department does not give any preference to business interests when reviewing permit applications, and consistently endeavors to work within the requirements of the statutes and rules.

3) *Commenters have noted that contaminants were detected in certain monitoring wells and have asked what is their significance is.*

Some residual impacts to groundwater quality remain from the former unlined landfill. These impacts are reflected in the analyses of samples taken from wells located within the Groundwater Management Zone (Zone) established because of the former unlined landfill. Additional wells constructed within this Zone also serve as release detection wells for part of the lined landfill.

Low concentrations of several VOCs have been detected in monitoring wells near the leachate collection and loading area.

4) *Commenters have expressed concern that the Department relies on NCES's procedures for the inspection of in-coming waste and that the Department does not independently assure that loads do not contain inappropriate or illegal waste. Many believe that the recent incident in which hundreds or thousands of American flags were accidentally disposed at the landfill points to a flaw in the system.*

There are 253 permitted solid waste facilities in the state including 13 operating landfills. While the Department conducts spot inspections at all solid waste facilities, it must rely on facility operators to ensure incoming loads do not contain prohibited wastes because there obviously cannot be a state inspector present at each facility on a continuous basis. That is part of the reason the Department requires that solid waste facility operators become certified pursuant to Env-Wm 3300. While personally very offensive to us, the flags are not a prohibited waste. However, by its own admission, NCES did not follow the procedures outlined in its operating plan, which states:

"Once vehicles are in the disposal area, compactor operators observe the waste as the vehicles discharge their load onto the working face. As refuse is spread at the working face, operators are to look for unacceptable materials which may have been placed in the load"

The operating plan is part of the permit to operate the landfill. The Department is evaluating the issue.

5) *Commenters expressed concern that the liner system will eventually fail and have questioned high flows in the secondary leak detection system.*

The New Hampshire Solid Waste Rules set minimum standards that landfill liners must meet. These minimum standards were approved by the USEPA in February 1995 when New Hampshire became an "approved state" to administer the federal solid waste rules (40 CFR 258). Liner systems built in New Hampshire are at least equivalent to the EPA national standard and are composed of two liner systems, a primary liner for leachate collection and a secondary liner for leak detection. In this respect the liner system for NCES Stage IV is no different than other landfills in the state and is equivalent to other landfills nationally. It is true that nothing built by humans will last forever. There is a required 30-year post closure monitoring period, which can be extended if necessary to assess landfill performance. National and state authorities are in the process of eliminating unlined landfills in favor of the current technology because unlined landfills generally cause adverse groundwater impacts. The need for landfills is a consequence of living in a modern industrialized society and will be needed for the foreseeable future. Current advances in technology have resulted in landfills that are far more protective of the environment than the unlined landfills.

There have been some elevated flows in the secondary liner in Stage I Phases II and III, and Stage II Phase II. In Stage I Phase II and Stage II Phase II the secondary flows exceeded the Department's action level of 100 gallons per acre per day for a consecutive 30-day period. This situation was addressed as follows. High secondary flows occurred in Stage II Phase II in June 2002. NCES reported that while the primary leachate pump was activated, an automatic check valve designed to prevent backflow into the secondary system, had failed. Thus, primary leachate was pumped into the secondary system making the secondary flow appear higher. The valve was repaired and the high flows have not been repeated. High secondary flows have been seen in Stage I, typically in spring. NCES determined that water was being trapped in the anchor trench and introduced into the secondary system during the wet months of the year. The primary and secondary liners were not welded together in Stage I and water could get in between the two. To address this problem, NCES exposed the anchor trench and welded the two liners together thereby eliminating the pathway. This work was completed in December 2002. The success of this remedy will be assessed this spring.

6) *Many commenters expressed concern about the leachate evaporator and believe that there should be stack testing. A petition was presented asking for the discontinuation of use of the evaporator.*

The leachate evaporator, owned by CommonWealth Bethlehem Energy, LLC, is operating in compliance with its permit. Therefore, the Department has no reason to revoke the permit and force its discontinuation of use. Please note that stack testing and ambient air monitoring was performed with Department oversight as described in the answer to comment number 7.

7) Commenters asked if there are long-term health effects associated with the leachate evaporator.

The Department evaluates devices based on applicable air regulations that are established to limit the emission of pollutants into the air to levels that are protective of public health and the environment. The primary regulation in New Hampshire addressing toxic air pollutants is the New Hampshire Code of Administrative Rules Env-A 1400, *Regulated Toxic Air Pollutants*. This regulation establishes 24-hour and annual Ambient Air Limits (AALs) for Regulated Toxic Air Pollutants (RTAPs). The 24-hour AALs are based on potential adverse effects from short-term exposure, and the annual AALs are based upon potential adverse effects from long-term or lifetime exposures. In setting annual AALs, The Department asks the New Hampshire Department of Health and Human Services, Bureau of Environmental and Occupational Health, (DHHS) to classify the toxicity of the pollutants. Following a determination by DHHS of the toxicity classification of the pollutant, the AALs were set using formulas set forth in Env-A 1400. More information regarding toxic air pollutants is available on Department's website at www.des.state.nh.us/ard/airtoxics.

The Department's method of limiting emissions of pollutants from stationary sources of air pollution to maintain compliance with the above health risk-based standards consists of evaluating emissions from the sources and putting conditions in air permits which limit emissions from the sources to levels that will not result in exceedances of the health-risk based standards. The Department also puts conditions in air permits requiring monitoring, recordkeeping, and reporting to ensure that actual emissions from sources are in compliance with their air permits and, therefore, not resulting in exceedances of the health risk-based standards. On November 3, 2000, and after such an evaluation, The Department issued an air permit allowing construction and operation of the flare system. The Department's evaluation of potential emissions from the flare system and description of the basis for the permit conditions designed to ensure compliance with the health risk-based standards were described in the November 3, 2000 *DES Response to Public Comments*. Since then, the flare system has been constructed and is currently in operation. The Department has inspected the facility and reviewed reports of operational data, and the Department has completed an ambient air monitoring program in the vicinity of the flare system. These evaluations indicate that the flare system was constructed and has been operating in accordance with the conditions of its air permit to date. The Department will continue to monitor its operation for compliance with the conditions of its air permit.

8) *There were several questions whether Stage IV is an expansion or a new landfill.*

The Department of Environmental Services permits Stage IV as a new landfill footprint and has assigned it its own permit number DES-SW-SP-03-002. That is why a Standard Permit Application was required for the permitting of Stage IV. Although this is a new footprint, the permitting requirements are identical had Stage IV been permitted as an expansion instead. Under federal solid waste rules however, Stage IV is considered a lateral expansion (ref. 40CFR 258.2) of an existing facility.

9) *Commenters expressed concern that the landfill is sited over an aquifer and have asked if this is allowed.*

The NCES facility is located over a stratified-drift aquifer. However, neither federal nor state regulations specifically restrict the development of double lined landfills above stratified-drift aquifers.

The stratified-drift aquifer in this area, as mapped by the U.S. Geological Survey is a little less than 4 square miles in area. About 60 percent of the area is in the adjacent Gale River watershed and is not characterized relative to its potential productivity. That part of the aquifer in the Ammonoosuc River watershed is characterized as having a transmissivity generally less than 1000 ft²/day and a saturated thickness generally less than 20 feet. Major stratified-drift aquifers in the state have transmissivities greater than 2000 ft²/day and saturated thicknesses greater than 40 feet. Only a small area west of the intersection of Route 302 and Trudeau Road has been judged by the U.S. Geological Survey to be potentially productive.

10) *Commenters have stated that certain appurtenances to the landfill are located outside the 51 acre area that the Grafton County Superior Court ruled could be developed for landfill use.*

The Solid Waste Rules require that a landfill be situated on land that is owned by the permittee (ref. Env-Wm 2504.06). The Rules also contain setbacks to external property lines and public roads (ref. Env-Wm 2504.04). The NCES Stage IV landfill meets these requirements. Physical situation of solid waste facilities relative to internal lot lines, exclusive of right-of-ways, is not regulated by the Department.

11) *Commenters stated that the landfill frequently causes odors.*

Pursuant to Env-Wm 2705.01(d)(4), a facility shall be operated and maintained in a manner that controls odor to the greatest extent practicable. Odor is an inherent characteristic of solid waste landfills that is typically the result of decomposing putrescible waste. Unfortunately, many of the constituents found in landfill gas have very low odor thresholds (i.e., the lowest concentration of that constituent in air that

people can smell). Because people naturally vary in their sensitivity to odor, however, odor nuisances can be difficult to regulate.

Recognizing that odor is associated with the waste placement process, the Department requires a preventative approach to control odors at the waste mass itself. In the case of landfills, a likely source of odor is exposed waste in the active portion of the landfill. Operators of facilities are therefore required to minimize the dispersal of offensive odors by minimizing the size of the working face (ref. Env-Wm 2506.02) and by applying a cover material (ref. Env-Wm 2506.03). It is also recognized that gases emitted by a decomposing waste mass can emit offensive odors. For that reason, a gas management program is implemented, to not only control gas migration but to also minimize odors. Gases are often collected and directed to facilities that destroy the hazardous constituents in the landfill gas by means of combustion.

At NCES, the actions taken to minimize the potential for off-site migration of odors associated with the landfill include: (1) an active landfill gas extraction system which draws gases from within the landfill where it is subsequently directed to a flare; (2) the progressive closure of portions of the landfill that have reached capacity to minimize the uncontrolled release of landfill gas; and (3) implementation of a complaint follow-up procedure to investigate and address any complaints received by the facility.

As noted above, the Department has requested that NCES implement procedures for improving the effectiveness of its gas collection system. This should also contribute to minimizing odors. With respect to odor complaints, complaints can be filed directly with NCES by calling 869-3366 or by contacting the Department's Waste Management Division at 271-2925. It is recommended that NCES be contacted first since they will be able to respond more quickly by investigating the potential cause of the odor and/or visiting the location of the odor complaint to verify the presence of odor caused by the landfill. If NCES is contacted after operating hours, the call will be forwarded to a calling service. The service in turn has been directed to contact NCES personnel in the event of an odor complaint or other non-routine business. NCES is required to maintain a log of all odor complaints and to provide them to the Department upon request.

Due to increased odor in November and December 2002, NCES extended the active gas system into Stage III in January and February, 2003 to capture gas generated in Stage III.

12) Many commenters express concern regarding the so called "main seep" and two new seeps that appeared briefly in the summer of 2002. Some have expressed concern that the seeps have not been adequately characterized. There was a question regarding the long-term health impacts of the seep.

The main seep has been routinely tested for all required inorganic indicator parameters and standard regulated volatile organic compounds (VOCs) for 18 years. VOCs have not been detected since April 1999. Concentrations of manganese in seep water exceed the health risk based standard and concentrations of iron exceed the

aesthetic standard. However, concentrations of iron and manganese approach background values at the Ammonoosuc River sampling site about 25 feet downstream of where the surface flow from the main seep enters the river. Special Condition 15 of the existing Groundwater Management and Release Detection Permit requires that evaluation of options for remediation of water quality in the seep be submitted to the Department no later than June 1, 2003.

Special Condition 16 of the Permit requires that results of continued evaluation of the "new" seeps be submitted to the Department no later than June 15, 2003.

13) *There were many comments regarding financial assurance. Some stated that the final financial assurance documentation for stage IV is not in the application. Some have stated that the insurance company used for FA is experiencing financial difficulties.*

"Final" financial assurance documents are required to be in place before the issuance of Operational Approval can be granted for the stage/phase for which approval is being sought. They are not required to be in place during the review phase of the permit application or construction of the stage/phase.

The federal criteria to use an insurance policy as a means to meet the financial assurance obligation requires that an insurer be licensed to transact the business of insurance in one or more States; or be eligible to provide insurance as excess or surplus lines insurers in one or more States. Insurance Corporation of Hannover, which provides financial assurance for NCES, meets the necessary requirements.

It should be noted that permittees are not allowed to use captive insurance companies to provide financial insurance.

14) *Commenters had questions regarding leachate quality.*

Leachate quality at NCES is comparable to leachate quality at other lined landfills in the state. NCES analyses leachate quality tri-annually. Results are available in Department files, but are not included in this response due to the voluminous nature of the material.

15) *Commenters have asked whether the Governor's Executive Order No. 2000-4 requiring notification for newly discovered AGQS violations and MiBE greater than 5ppb have been complied with.*

Conditions are not present that would trigger the Governor's Executive Order No. 2000-4. This order requires notification of abutters with water supply wells about new confirmed violations of groundwater quality standards detected since July 1, 2002, in monitor wells within 500 feet of their property. No new violations have been found in

such monitoring wells. Additionally, no VOCs above standards have been detected at the site since July 1, 2002.

16) *Commenters expressed concern over the issue of preemption, which is currently in litigation before the Grafton County Superior Court. Commenters have asked whether or not the State plans to weigh in on the issue.*

At this time the State has not taken a position on the issue of pre-emption.

17) *Commenters expressed the opinion that the Department should do more to promote public facilities to solve capacity shortfalls instead of relying on commercial capacity.*

There are nine lined landfills in New Hampshire. Of these, seven are municipally owned. These landfills are: Lebanon landfill, Lower Mt. Washington Valley Secure Solid Waste Landfill in Conway, Nashua Landfill, Mt. Carberry Landfill in Success, the Franklin Ash Landfill, the NH/VT Solid Waste Project Ash Landfill in Newport (closed) and the Somersworth Ash Landfill (closed). The remaining two, TLR-III Refuse Disposal Facility in Rochester and NCES, are privately owned.

The most recent landfill to become municipally owned is the Mt. Carberry Landfill in Success. The landfill was owned by Fraser Papers, the current owner of the Berlin and Gorham pulp and paper mills. Fraser sold the landfill to the Androscoggin Valley Regional Refuse Disposal District. The District submitted an application to expand the commercial capabilities of the Mt. Carberry Landfill. That application was approved by the Department on March 7, 2003.

18) *Commenters noted that trucks often park on Trudeau Road waiting for the facility to open, which is contrary to the facility's operating plan.*

The Department takes note of this comment.

19) *Comments were received regarding Public Benefit (RSA 149-M:11). An alternate capacity analysis was submitted by expert testimony on behalf of the Town of Bethlehem. Other commenters have asked for Department interpretation of various aspects of RSA 149-M:11.*

As part of the permitting for a new solid waste landfill, the Department, guided by statute and rule, determines if the proposed facility satisfies a capacity need. The Department received several capacity need analyses, including the applicant's and an alternative analysis prepared by consultants hired by the Town of Bethlehem. Attached to this letter is the Department's analysis that is the basis of the capacity needs determination, which indicates that a capacity shortfall will exist in the year 2013. The attached analysis shows waste generation and available capacity in detail.

Per RSA 149-M:11(V)(c), the Department interprets existing capacity to be all landfill capacity for which there is a valid standard permit and all permitted incinerators operating at their full capacities.

20) *Commenters have expressed concerns that NCES is fast-filling Stage III in violation of its existing permit and that NCES has indicated it would like to start filling Stage IV one year prior to the scheduled completion of filling in Stage III. Questions have been raised regarding whether or not this is warranted.*

Permit condition 7(f)(1) of permit DES-SW-SP-00-003 for Stage III requires that Stage III provide capacity for New Hampshire generators for 4.5 years. From the third quarter 2002 remaining volume survey submitted by NCES, the Department calculated that there was 48% of Stage III remaining volume while there was still 61% of the required 4.5 years remaining. The Department subsequently asked NCES in a letter dated October 21, 2002 to explain how it will comply with permit condition 7(f)(1). In response, NCES calculated the in-place density of waste to be 1,600 lbs. per cubic yard and based on that density could accept an average of 10,388 tons per month and still be able to meet its obligation. NCES asserts that it is in compliance with permit condition 7(f)(1). The Department notes that since September 2002, when the third quarter survey was done, the average waste acceptance to December has been 9,763 tons per months.

In its comment letter for the Stage IV application, the Department asked NCES to better explain the time frame and schedule for opening Stage IV and provide reasons for the schedule. The Department also asked NCES to better define the life expectancy of Stage IV and specifically how it coincides with Stage III, which is scheduled to be filled in June, 2005. NCES responded by saying that construction of Stage IV must commence in the 2004 construction season in order to be ready for June, 2005. NCES plans to start placing a non-puncturing layer of waste in Stage IV in November of 2004.

21) *Some commenters believe that Stage IV will be constructed over a 36-acre marsh.*

Wetlands were delineated by a licensed wetlands scientist. There are wetlands on the property outside of the Stage IV area. There are no wetlands within the Stage IV footprint.

22) *Commenters have asked how many unannounced inspections have been done at NCES.*

The last unannounced inspection was conducted on January 30, 2003. Prior to that there have been 5 inspections in 2002 most of which were unannounced. The Department conducts announced site visits when Department personnel wish to meet with a particular individual who might otherwise not be there.

Should you have additional questions regarding the Department's response, please contact Michael E. Guilfooy, P.E. of the Permitting and Design Review Section at (603) 271-6467 or at mguilfooy@des.state.nh.us. If your questions relate specifically to the capacity needs analysis, please contact Christopher Way at (603) 271-6847 or at cway@des.state.nh.us.

Sincerely,


Richard S. Reed, Administrator
Solid Waste Management Bureau

Enc: Capacity Needs Analysis

CC: Town of Bethlehem, Board of Selectman

Solid Waste Management District Member Towns:

- Town of Dalton
- Town of Easton
- Town of Franconia
- Town of Lancaster
- Town of Littleton
- Town of Sugar Hill

Councilor Raymond Burton

Sen. John T. Gallus

Rep. Stephanie Eaton

Rep. Ned Densmore

Rep. Michael Gilman

Larry Lackey, NCES

R. Scott Shillaber, P.E., Sanborn Head & Associates

Philip J. O'Brien, Ph.D., P.G., Director, WMD

Kenneth W. Marschner, Administrator, WMP

Michael Guilfooy, P.E., Acting Supervisor, PDRS

Christopher Way, Supervisor, PCAS

SWMB files

PIP

Town of Bethlehem

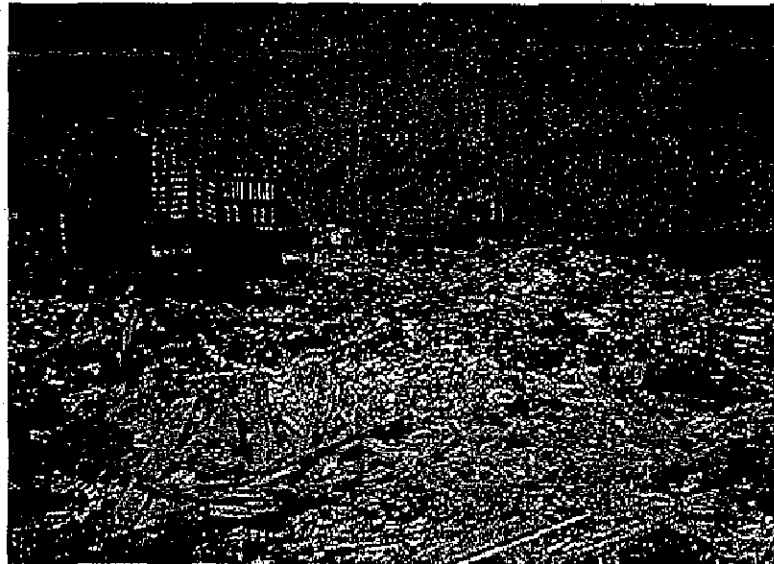
Docket #

Exhibit N

415-05 WMC



Capacity Needs Analysis



New Hampshire Department
of Environmental Services
Waste Management Division

March 7, 2003

Waste Generation for the Next Twenty Years

(Refer to Table 1)



Years of Projection

20-year intervals for long-term capacity.



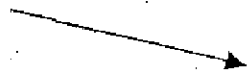
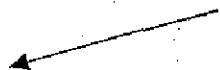
Population

Based upon Census 2000 and Office of State Planning estimates. (Column A)



Waste Generation

Population \times Per-capita \times 365 (days)/2000 =
Yearly waste generation. (Column B)

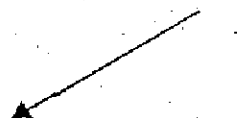
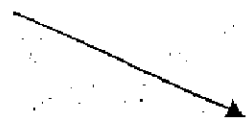


Waste reduction with 30% diversion

calculated by reducing the MSW by 30% after 2007. A gradual increase is projected from 25% in 2003 to 30% in 2007. (Column C)

Waste Reduction with 40% diversion

calculated by reducing the MSW by 40% after 2007. A gradual increase is projected from 25% in 2003 to 40% in 2007. (Column D)



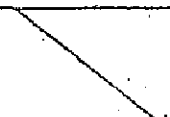
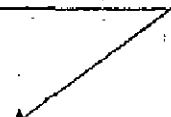
Construction and Demolition Wastes

Estimated at 1.1 lbs/person/day w/a 44% disposal rate until 2013. At that point, the rate is projected to increase to 65% due to declining demand for alternate daily cover (ADC). (Column E)



Select Wastes

Estimated at 0.31 lbs/person/day and includes treatment plant sludges, asbestos, other wastes, etc. (Column F)

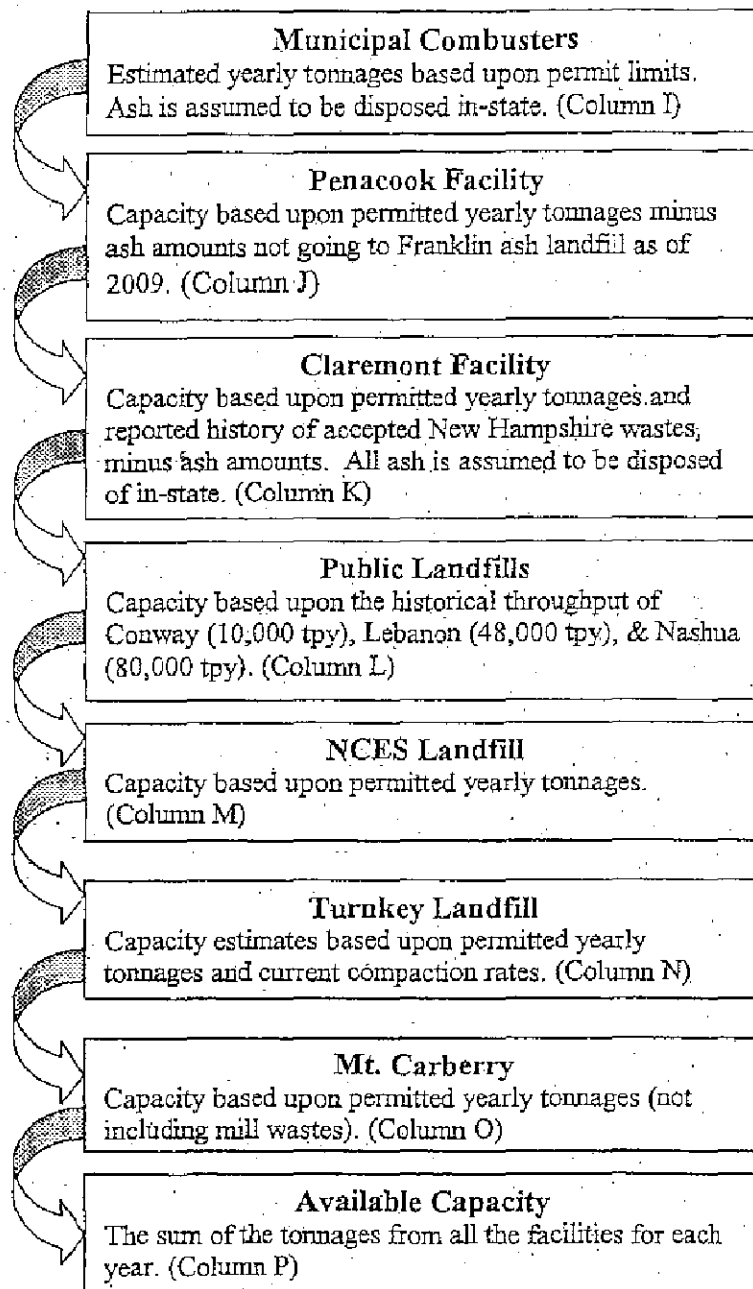


Total Waste Generation w/ 30% diversion. Add waste generation (w/ 30%), Construction & Demo, and select wastes. (Column G)

Total Waste Generation w/ 40% diversion. Add waste generation (w/ 40%), Construction and Demo, and select wastes. (Column H)

Facility Inventory & Remaining Capacity

(Refer to Table 2)



Remaining Capacity after 30% diversion
Subtract waste generation (w/ 30% diversion) from available capacity (less daily cover). A negative number indicates a shortfall. (Column Q)

Remaining Capacity after 40% diversion
Subtract waste generation (w/ 40% diversion) from available capacity (less daily cover). A negative number indicates a shortfall. (Column R)

Estimates of Available Capacity and Waste Generation

Table 1 - Twenty Year Analysis of Waste Generation in New Hampshire 2003-2022

Year	Waste Generation and Recycling				Other Waste Streams		Total Waste Generated in New Hampshire	
	A Population Projections ¹	B Waste Generation (tons)	C Waste Generation w/25-40% diversion (by 2007)	D Waste Generation w/25-40% diversion (by 2007)	E Construction debris needing disposal	F Select waste needing disposal	G Total waste generation w/30% diversion (by 2007)	H Total waste generation w/40% diversion (by 2007)
2003	1,280,950	1,402,840	1,051,980	1,051,980	113,146	72,470	1,237,596	1,237,596
2004	1,296,004	1,419,125	1,047,314	1,011,126	114,476	73,321	1,235,112	1,198,924
2005	1,311,059	1,435,610	1,042,253	999,036	115,806	74,173	1,232,232	1,159,015
2006	1,326,971	1,451,938	1,036,684	925,611	117,123	75,017	1,228,824	1,117,750
2007	1,340,883	1,468,267	1,027,787	880,960	118,440	75,860	1,222,087	1,075,261
2008	1,365,795	1,484,596	1,039,217	890,757	119,757	76,704	1,235,678	1,087,219
2009	1,370,707	1,500,924	1,050,647	900,554	121,075	77,548	1,249,298	1,099,177
2010	1,385,619	1,517,253	1,062,077	910,352	122,392	78,391	1,262,890	1,111,135
2011	1,399,646	1,532,612	1,072,828	919,567	123,631	79,185	1,275,644	1,122,383
2012	1,413,672	1,547,971	1,083,580	928,783	124,870	79,979	1,288,428	1,133,631
2013	1,427,699	1,563,330	1,094,331	937,998	126,109	80,772	1,301,212	1,144,879
2014	1,441,725	1,578,689	1,105,083	947,214	128,127	81,566	1,314,775	1,156,127
2015	1,455,752	1,594,048	1,115,834	956,429	129,957	82,359	1,328,338	1,167,375
2016	1,468,709	1,608,236	1,126,765	964,942	131,648	83,092	1,400,505	1,239,692
2017	1,481,665	1,622,423	1,136,696	973,454	133,339	83,825	1,412,860	1,250,618
2018	1,494,622	1,636,611	1,145,628	981,967	135,029	84,558	1,425,215	1,261,554
2019	1,507,578	1,650,798	1,155,559	990,479	136,720	85,291	1,437,570	1,272,480
2020	1,520,535	1,664,986	1,165,490	998,991	138,411	86,024	1,449,925	1,283,420
2021	1,533,599	1,679,174	1,175,504	1,007,575	200,115	86,763	1,462,382	1,294,455
2022	1,546,663	1,693,361	1,185,517	1,016,158	201,820	87,502	1,474,840	1,305,480
Totals	28,358,853	31,052,944	24,918,773	19,163,933	3,071,992	1,604,402	26,595,166	23,840,326

Notes for Table 1:

The implied precision of data is a result of the calculation process, and should not be viewed as an "absolute".

¹Population figures are based upon 2000 census and 2002 Office of State Planning projections.

²Waste Generation is based upon 6.0lbs/person/day.

³30% diversion rate in 2007 assumes a linear growth from 25% in 2003 to 30% in 2007, and remaining at 30% thereafter.

⁴40% diversion rate in 2007 assumes a linear growth from 25% in 2003 to 40% in 2007, and remaining at 40% thereafter.

⁵Construction and demolition debris is estimated at 1.1lbs/person/day with a processing rate of 56% decreasing to 35% in 2013 (due to Turkey landfill closure).

⁶Select waste ("other") is estimated at 0.31lbs/person/day and includes asbestos, ash, treatment sludges and other solid wastes needing disposal.

⁷Total waste generation reflects a 30% diversion rate for MSW.

⁸Total waste generation reflects a 40% diversion rate for MSW.

Estimates of Available Capacity and Waste Generation

Table 2 - Potential Shortfall Reflecting Actual Existing Conditions (Permitted Capacity)

Municipal Combustors	Incinerators				Landfills				Total Available				Existing Capacity and Projected Shortfalls	
	Pennacook W.T.E. (est. capacity) ¹	Clarendon W.T.E. (est. capacity) ²	Public Landfills	Turnkey L-4	NCES L-1 ³	McCarbery L-1 ⁴	Available Capacity ⁵	Remaining Capacity after 30% diversion ⁶	Remaining Capacity after 40% diversion ⁷	Projected Shortfalls	Projected Shortfalls	Projected Shortfalls	Projected Shortfalls	Projected Shortfalls
2003	26,019	209,875	22,000	1,107,000	120,000	32,500	1,685,394	417,788	374,879	417,788	374,879	374,879	374,879	374,879
2004	26,019	209,875	22,000	1,045,500	60,000	32,500	1,593,894	358,782	301,662	358,782	301,662	301,662	301,662	301,662
2005	26,019	209,875	22,000	984,000	32,500	32,500	1,412,394	183,570	190,307	183,570	190,307	190,307	190,307	190,307
2006	26,019	209,875	22,000	922,500	32,500	32,500	1,350,894	115,216	101,625	115,216	101,625	101,625	101,625	101,625
2007	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	15,784	2,950	15,784	2,950	2,950	2,950	2,950
2008	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2009	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2010	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2011	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2012	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2013	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2014	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2015	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2016	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2017	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2018	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2019	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2020	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2021	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
2022	26,019	209,875	22,000	910,200	32,500	32,500	1,278,594	2,950	157,459	157,459	157,459	157,459	157,459	157,459
Totals	338,247	3,417,500	440,000	9,741,600	300,000	650,000	17,547,347	3,947,819	3,947,819	3,947,819	3,947,819	3,947,819	3,947,819	3,947,819

Notes for Table 2:

- The implied precision of data is a result of the calculation process, and should not be viewed as an "absolute".
- Tonnages of municipal combustors are set in the conditions of the air and WMD permits.
- The Penacook tonnages reflect recent modifications to the WMD permit (575 tpy). Ash will be managed in the Franklin Landfill until 2009. Thereafter, the ash is deducted from Penacook's capacity.
- The Clarendon incinerator currently provides disposal for about 44,000 tpy to New Hampshire customers. The net amount is adjusted for ash that does not have a dedicated NH disposal location.
- Includes the facilities for Lebanon (48,000 tpy), Nashua (80,000 tpy) and Conway (10,000 tpy).
- The estimated Turnkey amounts reflect achievements in density compaction. Possible future development potential of the site is not included.
- NCES tonnages do not include requested expansion potential for the site (known as Stage IV).
- McCarbery tonnages do not include requested expansion potential for the site and do not include mill wastes.
- Available capacity is the total amount of capacity provided by all facilities in the inventory.
- Anticipated shortfall assumes 30% diversion and the inclusion of all waste streams.
- Anticipated shortfall assumes 40% diversion and the inclusion of all waste streams.

Estimates of Available Capacity and Waste Generation

Table 3 - Potential Shortfall Reflecting Additional Capacity Provided by a Possible Expansion of the Mt. Carberry Landfill

Total Available Existing Capacity and Projected Shortfalls									
Generators			Landfills		Shortfalls				
J	K	L	M	N	O	P			
Municipal Customers	Pennacook W.T.E. (net capacity)	Clarendon W.T.E. (net capacity)	Public Landfills	NCES LFT	Mt. Garbary LFT	Available Capacity			
2003	26,019	209,875	22,000	138,000	1,107,000	120,000	1,742,894	505,298	482,470
2004	26,019	209,875	22,000	138,000	1,045,500	120,000	1,661,394	416,282	462,379
2005	26,019	209,875	22,000	138,000	1,045,500	60,000	1,621,394	389,162	382,144
2006	26,019	209,875	22,000	138,000	984,000		1,499,894	271,070	424,633
2007	26,019	209,875	22,000	138,000	984,000		1,499,894	277,807	351,175
2008	26,019	209,875	22,000	138,000	922,500		1,436,394	202,716	339,217
2009	26,019	209,875	22,000	138,000	922,500		1,436,394	189,125	254,959
2010	26,019	149,875	22,000	138,000	910,200		1,366,094	103,234	243,711
2011	26,019	149,875	22,000	138,000	910,200		1,366,094	90,450	232,463
2012	26,019	149,875	22,000	138,000	910,200		1,366,094	77,666	688,985
2013	26,019	149,875	22,000	138,000			455,894	845,318	761,012
2014	26,019	149,875	22,000	138,000			455,894	918,881	772,052
2015	26,019	149,875	22,000	138,000			455,894	932,252	1,859,807
2016		149,875	22,000	138,000			429,875	970,830	1,620,743
2017		149,875	22,000	138,000			429,875	982,965	1,647,615
2018		149,875	22,000	138,000			429,875	989,349	1,653,552
2019		149,875	22,000	138,000			429,875	1,007,689	1,659,570
2020		149,875	22,000	138,000			429,875	1,020,050	1,665,005
2021		149,875	22,000	138,000			429,875	1,032,411	1,665,005
2022		149,875	22,000	138,000			429,875	1,044,065	1,665,005
Totals	338,247	3,417,500	440,000	2,760,000	9,741,500	300,000	19,397,347	7,197,819	4,443,973

Notes for Table 3:

- The implied precision of data is a result of the calculation process, and should not be viewed as an "absolute".
- Penalties of municipal combustions are set in the conditions of the air and WMD permits.
- The Pennacook tonnages reflect recent modifications to the WMD permit (575 tpy). Ash will be managed in the Franklin Landfill until 2009. Thereafter, the ash must be depicted from Pennacook's capacity.
- The Clarendon Incinerator currently provides disposal for about 44,000 tpy to New Hampshire customers. The net amount is adjusted for ash that does not have a dedicated disposal location.
- Includes the facilities for Lebanon (48,000 tpy), Nashua (80,000 tpy) and Conway (10,000 tpy).
- The estimated Turnkey amounts reflect achievements in density compaction. Possible future development potential of the site is not included.
- NHDES tonnages do not include requested expansion potential for the site (known as Stage IV).
- Mt. Carberry tonnages include requested expansion potential for the site and do not include mill wastes.
- Available capacity is the total amount of capacity provided by all facilities in the inventory.
- Anticipated shortfall assumes 30% diversion and the inclusion of all waste streams.
- Anticipated shortfall assumes 40% diversion and the inclusion of all waste streams.

Estimates of Available Capacity and Waste Generation

Table 4 - Potential Shortfall Reflecting Additional Capacity Provided by a Possible NCES Expansion

	Incinerators				Landfills				Total Available, Existing Capacity and Projected Shortfalls			
	I	J	K	L	E	M	N	O	P	Q	R	S
	Municipal Combustors ¹	Panacook WTE (net capacity) ²	Claremont WTE (net capacity) ³		Public Landfills ⁴	Turkey LP ⁵	NCES LP ⁶	Mt. Garberry LP ⁷	Available Capacity ⁸	Remaining Capacity after 30% diversion ⁹	Remaining Capacity after 40% diversion ¹⁰	
2003	26,019	209,875	22,000		138,000	1,107,000	120,000	32,500	1,655,394	417,790	417,790	
2004	26,019	209,875	22,000		138,000	1,045,500	120,000	32,500	1,593,894	358,782	358,782	
2005	26,019	209,875	22,000		138,000	1,045,500	130,000	32,500	1,603,894	371,662	371,662	
2006	26,019	209,875	22,000		138,000	984,000	140,000	32,500	1,552,394	323,570	323,570	
2007	26,019	209,875	22,000		138,000	922,500	140,000	32,500	1,490,894	255,216	255,216	
2008	26,019	209,875	22,000		138,000	922,500	140,000	32,500	1,490,894	241,525	241,525	
2009	26,019	209,875	22,000		138,000	910,200	140,000	32,500	1,418,594	155,734	155,734	
2010	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	142,950	142,950	
2011	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	130,166	130,166	
2012	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	117,382	117,382	
2013	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	104,598	104,598	
2014	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	91,814	91,814	
2015	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	79,030	79,030	
2016	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	66,246	66,246	
2017	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	53,462	53,462	
2018	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	40,678	40,678	
2019	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	27,894	27,894	
2020	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	15,110	15,110	
2021	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	2,326	2,326	
2022	26,019	149,875	22,000		138,000	910,200	140,000	32,500	1,418,594	(9,458)	(9,458)	
Totals	338,247	3,417,500	440,000		2,760,000	9,741,500	1,840,000	650,000	19,187,347	7,407,819	4,553,973	

Notes for Table 4:

The implied precision of data is a result of the calculation process, and should not be viewed as an "absolute".

¹ Tonnages of municipal combustors are set in the conditions of the air and WMD permits.

² The Panacook tonnages reflect recent modifications to the WMD permit (575 tpy). Ash will be managed in the Franklin Landfill until 2009. Thereafter, the ash must be deducted from Panacook's capacity.

³ The Claremont incinerator currently provides disposal for about 44,000 tpy to New Hampshire customers. The net amount is adjusted for ash that does not have a dedicated disposal location.

⁴ Includes the facilities for Lebanon (48,000 tpy), Nashua (80,000 tpy) and Conway (10,000 tpy).

⁵ The estimated Turkey amounts reflect achievements in density compaction. Possible future development potential of the site is not included.

⁶ NCES tonnages include requested expansion potential for the site (known as Stage IV).

⁷ Mt. Garberry tonnages do not include requested expansion potential for the site and do not include mill wastes.

⁸ Available capacity is the total amount of capacity provided by all facilities in the inventory.

⁹ Anticipated shortfall assumes 30% diversion and the inclusion of all waste streams.

¹⁰ Anticipated shortfall assumes 40% diversion and the inclusion of all waste streams.

Table 5 - Potential Shortfall Reflecting Additional Capacity Provided by a Possible Mt. Carberry Expansion and NCES Expansion

Municipal Combustors ¹	Incinerators		Landfills				Total Available Existing Capacity and Projected Shortfalls			
	Pennacook WTE (net capacity) ²	Clarendon WTE (net capacity) ²	L	M	N	O	P	Q	R	
			Public Landfills ³	Turnkey ⁴	NCES ⁵	Mt. Carberry ⁶	Available Capacity ⁷	Remaining Capacity after 30% diversion ⁸	Remaining Capacity after 40% diversion ⁹	
2003	26,019	209,875	138,000	1,107,000	120,000	120,000	1,742,894	505,298	505,298	
2004	26,019	209,875	138,000	1,045,500	120,000	120,000	1,681,394	446,282	482,470	
2005	26,019	209,875	138,000	1,045,500	130,000	120,000	1,691,394	459,162	532,379	
2006	26,019	209,875	138,000	984,000	140,000	120,000	1,639,894	411,070	522,144	
2007	26,019	209,875	138,000	984,000	140,000	120,000	1,639,894	417,807	564,633	
2008	26,019	209,875	138,000	922,500	140,000	120,000	1,578,394	342,716	491,175	
2009	26,019	209,875	138,000	922,500	140,000	120,000	1,578,394	329,125	479,217	
2010	26,019	149,875	138,000	910,200	140,000	120,000	1,508,094	243,234	394,959	
2011	26,019	149,875	138,000	910,200	140,000	120,000	1,508,094	230,450	383,711	
2012	26,019	149,875	138,000	910,200	140,000	120,000	1,508,094	217,666	372,463	
2013	26,019	149,875	138,000	138,000	140,000	120,000	585,894	765,318	548,938	
2014	26,019	149,875	138,000	138,000	140,000	120,000	585,894	778,581	621,612	
2015	26,019	149,875	138,000	138,000	140,000	120,000	585,894	792,237	637,952	
2016	26,019	149,875	138,000	138,000	70,000	120,000	499,875	500,630	735,907	
2017	26,019	149,875	138,000	138,000	140,000	120,000	429,875	502,385	620,748	
2018	26,019	149,875	138,000	138,000	140,000	120,000	429,875	502,385	631,679	
2019	26,019	149,875	138,000	138,000	140,000	120,000	429,875	502,385	642,611	
2020	26,019	149,875	138,000	138,000	140,000	120,000	429,875	502,385	653,537	
2021	26,019	149,875	138,000	138,000	140,000	120,000	429,875	502,385	664,576	
2022	26,019	149,875	138,000	138,000	140,000	120,000	429,875	502,385	675,603	
Totals	338,247	3,417,500	2,760,000	9,741,600	1,840,000	2,400,000	20,937,347	5,657,819	2,890,879	

Notes for Table 5:

The implied precision of data is a result of the calculation process, and should not be viewed as an "absolute".

¹ Tonnages of municipal combustors are set in the conditions of the air and WMD permits.

² The Pennacook tonnages reflect recent modifications to the WMD permit (575 tpy). Ash will be managed in the Franklin Landfill until 2008. Thereafter, the ash must be deducted from Pennacook's capacity.

³ The Clarendon Incinerator currently provides disposal for about 44,000 tpy to New Hampshire customers. The net amount is adjusted for ash that does not have a dedicated disposal location.

⁴ Includes the facilities for Lebanon (48,000 tpy), Nashua (80,000 tpy) and Conway (10,000 tpy).

⁵ The estimated Turnkey amounts reflect achievements in density compaction. Possible future development potential of the site is not included.

⁶ NCES tonnages include requested expansion potential for the site (known as Stage IV).

⁷ Mt. Carberry tonnages include requested expansion potential for the site and do not include mill wastes.

⁸ Available capacity is the total amount of capacity provided by all facilities in the inventory.

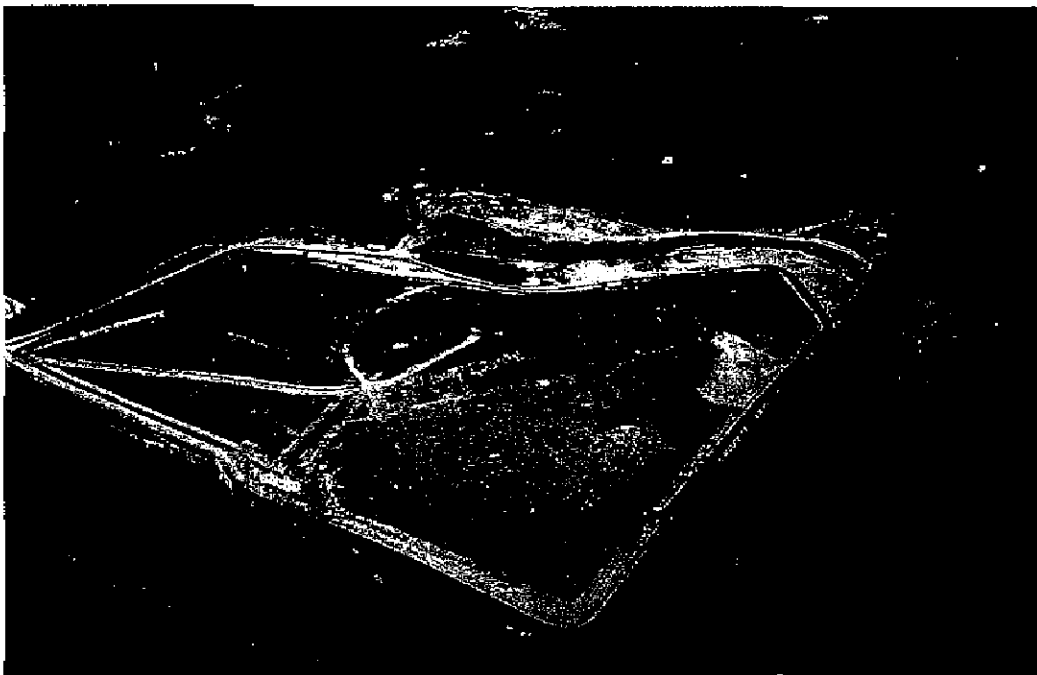
⁹ Anticipated shortfall assumes 30% diversion and the inclusion of all waste streams.

¹⁰ Anticipated shortfall assumes 40% diversion and the inclusion of all waste streams.

Town of Bethlehem

Docket #

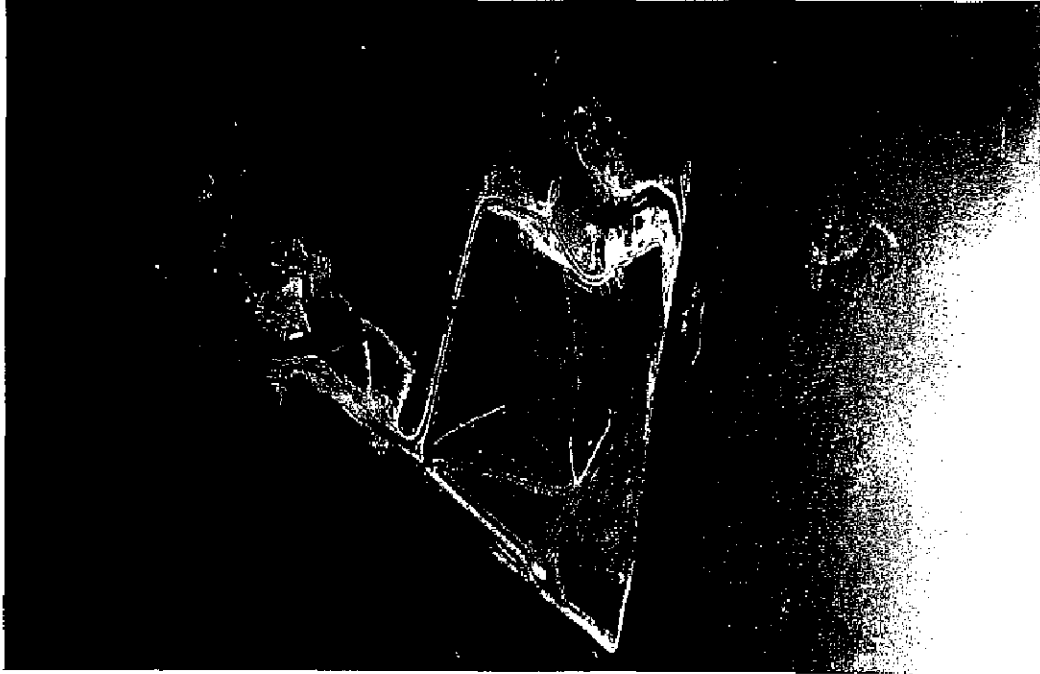
Exhibit O - 1 03-05 WMC



Town of Bethlehem

Docket #

Exhibit O - 2 03-05 WMC

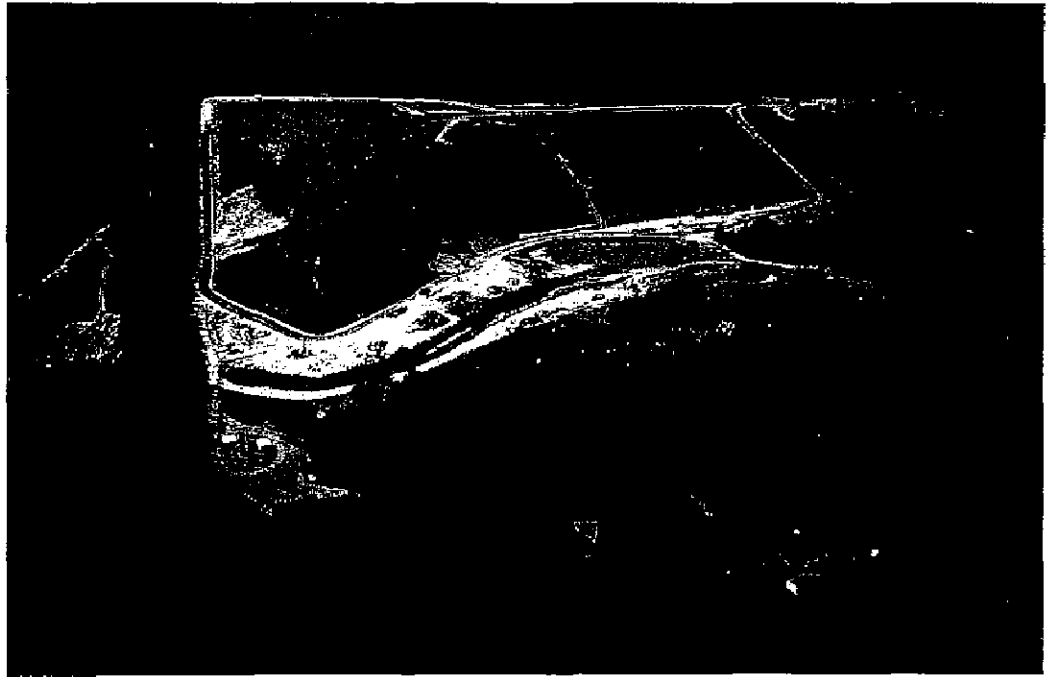


Town of Bethlehem

Docket # _____

Exhibit O - 3

05-05 WMC



**AMENDMENT TO ZONING ORDINANCE
RELATIVE TO INDUSTRY-4 (I-4), INDUSTRY 4A (I-4A)
AND INDUSTRY-3 (I-3) ZONING DISTRICTS**

THE CITY OF ROCHESTER ORDAINS:

I. That Chapter 42, Section 42.2 of the General Ordinances of the City of Rochester entitled "Zoning Districts and Zoning Map" as presently amended, be further amended by amending subsection (b) thereof by deleting from such subsection subparagraphs (7) and (8) thereof in their entirety, and by substituting in their stead the following subparagraph, such subparagraphs to be known respectively as subparagraphs (7) and (8) of said subsection (b):

"(7) Amendment Relating to Area Situate on Both Sides of the Rochester Neck Road and between the Rivers. That the following described area be reclassified from its current "Industry-4 (I-4) Zone" and "Industry-4A (I-4A) Zone" classification to a "Industry-4 (I-4) Zone" classification.

Beginning at the confluence of the Cochecho and Isinglass Rivers; thence running in a general northerly and northwesterly direction along the thread of the Cochecho River to a point in the thread of said river at the northwest corner of Tax Map 267 Lot 2 (as in effect as of April 1, 2002); thence turning and running in a southwesterly direction along said lot line to a point located 2500 feet easterly from the centerline of the right of way for New Hampshire Route 125; thence turning and running in a southerly direction on a line parallel to and 2500 feet easterly of centerline for said road and continuing to the centerline of Rochester Neck Road; thence turning and running in a southeasterly direction along the centerline of Rochester Neck Road to a point 3500 feet easterly of the centerline of the right of way for New Hampshire Route 125; thence turning and running in a south and southwesterly direction on a line parallel to and 3500 feet easterly of the centerline of said road and continuing to the Barrington town line; thence turning and running in a southeasterly direction along the Barrington town line to the point where said town line intersects with the thread of the Isinglass River; thence turning and running in a generally southeasterly direction along the thread of the Isinglass River to the point of beginning.

"(8) Amendment Relating to Area Situate on Both Sides of the Rochester Neck Road and between the Rivers. That the following described area be designated as having an "Industry-4A (I-4A) Zone" classification;

Beginning at a point in the thread of the Cocheco River at the northwest corner of Tax Map 267 Lot 2 (as in effect as of April 1, 2002), and thence running in a southwesterly direction along lot line of said parcel to a point located 2500 feet easterly from the centerline of the right-of-way for New Hampshire Route 125; thence turning and running in a southerly direction along a line parallel to and 2500 feet easterly from the centerline of said road and continuing to the centerline of Rochester Neck Road; thence turning and running in a southeasterly direction along the centerline for said road to a point 3500 feet easterly of the centerline of the right of way for New Hampshire Route 125; thence turning and running in a south, southwesterly direction on a line parallel to and 5500 feet easterly of the centerline of the right of way for New Hampshire Route 125 and continuing to the Barrington town line; thence turning and running in a northwesterly direction along said town line, 1500 feet to a point located 2000 feet easterly of the centerline of the right-of-way for said New Hampshire Route 125; thence turning and running in a northeast and northerly direction on a line parallel to and 2000 feet easterly of the centerline of the right-of-way for said New Hampshire Route 125 crossing the Rochester Neck Road and continuing to an iron pipe set in the ground at land of the Rochester Country Club and land of Waste Management of New Hampshire, Inc. (formerly Forest Meadows Realty Trust) at a brook or stream; thence running in an easterly direction to the thread of the Cocheco River; thence following the thread of said River to the point of beginning.

II. That Chapter 42, Section 42.14 of the General Ordinances of the City of Rochester entitled "Permitted Uses-Table 1" as presently amended, be further amended by amending subsection (A) thereof entitled "RESIDENTIAL USES", by changing subparagraphs (3a) and (4A) thereof as follows:

USES	A	R1	R2	B1	B2	I1	I2	D	I4	I4A	H	Detail
(A) RESIDENTIAL USES												
(3a) Family Housing	E	M	E	E	E	N	N	NE	N	N	N	42.23(3)(a)
(4A) Group or Shared Home	E	N	Y	Y	Y	N	N	N	NY	NY	N	42.23(4)(A)

III. That Chapter 42, Section 42.14 of the General Ordinances of the City of Rochester entitled "Permitted Uses-Table 1" as presently amended, be further amended by amending subsection (C) thereof entitled "AGRICULTURAL/RECREATION USES", by changing subparagraphs (6) (7) and (8) thereof as follows:

USES	A	R1	R2	B1	B2	I1	I2	I3	I4	I4A	II	Detail
(A) AGRICULTURAL/RECREATION USES												
(6) Flower and Plant Nursery and Greenhouse	Y	N	N	N	Y	N	N	N	NY	NY	N	
(7) Amusement Enterprises	N	N	N	E	E	N	N	N	NY	NY	N	43.23.10.12
(8) Recreation Area, Day Camp	Y	N	N	E	E	N	N	N	NY	NY	N	

IV. That Chapter 42, Section 42.23 of the General Ordinances of the City of Rochester entitled "Special Exceptions" as presently amended, be further amended by inserting in subsection (c), subparagraph (26) thereof entitled "Elderly Housing", the words "Industry-3" in the first sentence thereof after the word "Business 2" and before the words "zoning districts."

August 6, 2002

Adjustments the request to rezone land in East Rochester from I-2 to R-1. The Committee unanimously recommended the zoning request be approved.

Councilor Walker **MOVED** to approve the zoning requested. Councilor Stevens seconded the motion. Councilor Stevens stated he spend time going through the building and that is the only logical use for the building at this time. He said it would add a lot to the area and less intrusive than anything else. Councilor McManus noted he would vote against the rezoning. Mayor Hoerman agreed with Councilor McManus and stated he is uncomfortable changing too much of the I-2 to residential. There is a fairly limit amount of I-2 Zoning. Councilor Henderson said he would vote for rezoning from I-2 to residential zoning. Councilor Reed-Erickson added he planned to vote for the rezoning as well.

Councilor Lundborn **MOVED** to read the amendment by title only for a second reading. Council Stevens seconded the motion. A unanimous voice vote **CARRIED** the **MOTION**. Councilor Lundborn read the Amendment to Zoning Ordinance Relative to Land Situate Northeasterly of Weare Street in East Rochester. Councilor Lundborn **MOVED** adopting the Amendment to Zoning Ordinance Relative to Land Situate Northeasterly of Weare Street in East Rochester. Councilor Keans seconded the motion. Councilor Torr requested a roll call vote be taken. Councilors Lindsay, Keans, Walker, Torr, Stevens, Lundborn, Healey, Henderson, Lauterborn, and Reed-Erickson voted for adoption of the amendment. Councilors Levesque, McManus and Mayor Hoerman voted to deny the amendment. The **MOTION** to adopt the amendment **CARRIED** 10-3. The amendment is attached to the minutes.

* **Amendment to Zoning Ordinance Relative Industry —4 (I-4), Industry 4A (I-4A) and Industry — 3 (I-3) Zoning Districts.**

Councilor Lundborn reported the Codes and Ordinance met on July 18, 2002. At that meeting there was a Public Hearing of Proposed Zoning Amendments submitted by Waste Management. The proposed rezoning was for Industry 4A to Industry 4. There was also a section from 3A which was withdrawn by Waste Management. The Planning Department did not approve that portion either. He noted the City Attorney said it needed to be included any ways. Councilor Lundborn said the Committee unanimously voted to adopt the amendment as amended by removed the 3 (I-3) zoning district.

Councilor Lundborn **MOVED** reading the amendment for a second reading by title only. Councilor Keans said she was uncomfortable removing 3 (I-3) Elderly Housing. She stated if one type of housing is going to be allowed, then there are probably others that need to be allowed. She added a group or shared home has the potential of making a stigma, against those types of people that chose to live in that kind of housing. She said she did not feel it was healthy for the community to set up different groups of citizens. Councilor Keans stated that she had been assured that when the Zoning regulations and would be very

specific on definition of amusement enterprises. Councilor Lundborn said the reason the request went out to withdraw the 3A was that there were other 3A zones through out the City and they did not want to give the opportunity because they would be inappropriate for those type areas and there is only one zone 4.

Councilor Lundborn read the amendment for a second reading by title only. Councilor Lundborn **MOVED** adopting the Amendment as amended removing 3 (1-3). Councilor Stevens seconded the motion. A unanimous voice vote **CARRIED** the **MOTION**.

Councilor Lundborn further reported at the meeting of July 18, 2002 also had a meeting regarding licensing fees for pinball machines and video games and whether or not there should be a semi-yearly licensing fee. The committee is holding this in committee until it receives feedback from Attorney Wensley regarding a specific question that had been asked.

c) Finance Committee

Mayor Horman reported the Finance Committee would meet on Tuesday, August 13, 2002.

d) Public Safety Committee

Councilor Walker said there was no report from the Public Safety Committee.

i) Skate Board Park Committee Report

This item was discussed earlier in the 11. Reports of Committees.

a) Public Works Committee

Councilor Torr reported the Committee had met, but they did not have a quorum. They did discuss the restrooms and lunch counter at the Commons and Mr. White, Director of Public Works has sent out the proposal to a company in Portsmouth, but nothing has come back yet.

Councilor Torr reported the committee had also met on June 6, 2002 and they would like to discuss the issue on Duquette Street. There is a company that wanted to go to the water main and get some leads out of there. Time is passing on. A deadline had been given to them and the deadline is coming near. If the people in the area do not get the street paved this year, they will know whom to blame. He added he was up there the other day and nothing had been done.

Mr. Winders, Conservation Commissioner, explained the company is waiting for Wetlands permits. Councilor Lundborn said the City Manager should call Mr. Horihane. He added Mr. Horihane did assure Council that it would be done post haste. Councilor Keane asked Councilor Torr to give a brief update on the

BOUTIN ASSOCIATES, P.L.L.C.
Attorneys At Law

Brenda E. Keith

Town of Bethlehem
Docket #
Exhibit Q 03-05 WMC

February 28, 2003

Attn: Michael Guilfooy, P.E.
NH Department of Environmental Services
Waste Management Division
Permitting and Design Review Section
6 Hazen Drive, P.O. Box 95
Concord, NH 03301-6509

Via E-mail & USPS

Re: Stage IV Standard Permit Application, North Country Environmental Services, Inc.

Dear Mr. Guilfooy:

We write to draw your attention to an omission in North Country Environmental Services, Inc.'s ("NCES") Stage IV application now under consideration by the Department of Solid Waste Management. We enclose a copy of the pertinent page from Section III of the application, entitled "Status of Other Permits/Approvals."

Under RSA 149-M:9(X), the Department shall not issue a permit for a solid waste facility unless the facility meets the terms and conditions required in rules adopted by the commissioner. ENV-Wm 314.07 Status of Other Permits/Approvals indicates that the applicant shall identify and provide the status of other required permits and approvals, including all local permits or approvals which are, or may be required for the facility. See Env-Wm 314.07(a). Therefore, NCES must properly disclose the status of local zoning approvals under Env-Wm 314.07, which it has not done. NCES failed to check off any status under "Local zoning approval or zoning variance" on Page III-2. If, however, NCES has supplied a revised Page III-2, we request a copy of that revision. If there is no revised Page III-2, then the application is incomplete.

As you know, NCES does not as yet have any variance or special exception to operate a landfill outside of the Town of Bethlehem's zone where, by court decree, the use is permitted, i.e., the 51 acres addressed in North Country Environmental Services v. Bethlehem, 146 N.H. 348 (2001) ("NCES I"). Nor has NCES applied for either a variance or special exception. Stage IV, as designed, will be partially sited outside the approved zone. Of course, as you are also aware, the issue of whether NCES needs a variance or special exception is currently being litigated in Grafton County Superior Court. This does not relieve NCES's obligation to disclose the zoning status of its proposed expansion.

One of the requirements for finding a public benefit, is that the views of the local community and its governing body be considered. See RSA 149-M:11(IV)(a). The community has, by voting on more than one occasion to adopt various zoning amendments, expressed the

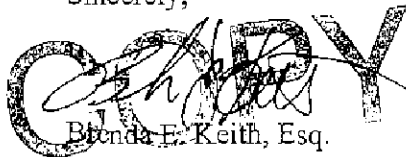
BOUTIN ASSOCIATES, P.L.L.C.

Michael Guilfoey
February 28, 2003
Page 2

view that the landfill not be expanded. Nothing in the NCES I decision precludes the enforcement of these zoning amendments, nor did it obviate their effect as stating the view and applicable land use regulation in Bethlehem.

Thank you for your help in this matter.

Sincerely,



Brenda E. Keith, Esq.

c. Town of Bethlehem
Bryan Gould, Esq.
File

SECTION III. STATUS OF OTHER PERMITS/ APPROVALS

Using the chart below, provide a list of all local and other state or federal permits or approvals required of the facility. Some of the most commonly required permits have been listed for you. Indicate whether they apply and supply information relevant to their status, as shown. Add to the list as necessary. Use separate paper as necessary. Please print or type.

If no such permits or approvals are needed, please check here: ☐

PERMIT IDENTIFICATION	CHECK IF PERMIT IS REQUIRED	DATE APPLICATION FILED/ TO BE FILED	DATE ISSUED/ APPROVED (Attach a copy if issued)	DATE EXPIRES
Permit from the DES Air Resources Division for open burning, combustion and incineration; other process emissions and/or landfill gas control per the requirements of RSA 125-C, RSA 125-I and/or Env-A 100-1300.	✓		11/03/00	5/31/02
Groundwater Permit from the DES Groundwater Protection Bureau, per the requirements of RSA 485-A, RSA 485-C and/or Env-Ws 410.	✓		Last Revised 12/15/00	11/09/02
Permit from the DES Water Division to dredge, fill or significantly alter the terrain per the requirements of RSA 485-A:17 and Env-Ws 415.	✓	With Solid Waste Permit Application		
Permit from the DES Wetlands Bureau to dredge and fill in or adjacent to the surface waters of the state, per the requirements of RSA 482-A and Wt 100-800.				
Permit for driveway access onto any Class I or Class II highway or state maintained portion of a Class II highway, from the NH Department of Transportation (NHDOT), per the requirements of RSA 236:13.				
Permit from NHDOT to operate and maintain a junkyard within 1000 feet of, or visible from, the main traveled way of the interstate, federal aid primary, or turnpike systems, per the requirements of RSA 236:90-110.				
Local zoning approval or zoning variance.				
Local building permits and site plan approval(s).	✓	Site plan review of the following aspects of operations may be required but only to the extent that such review and conditions of approval do not intrude upon or frustrate the regulatory authority of NHDOT: traffic and roads, landscaping, building specifications, snow and sewage removal, signage and similar matters. This site plan review jurisdiction must also be exercised in good faith and without exclusionary effort.		
Other (specify):				

Brenda

To: mguilfoy@des.state.nh.us
Subject: Stage IV Application of NCES - Bethlehem

Dear Mr. Guilfoy,

I have attached a letter, with a copy of the letter and its enclosure to follow via mail.



guilfoy1.doc

Thank you,
Brenda E. Keith
Boutin & Associates
603-432-9566